THE FREEMAN

IDEAS ON LIBERTY

Transforming the Command Economies

Germany: The Promise of Freedom

Homosexuality's Legal Revolution

MAY 1991

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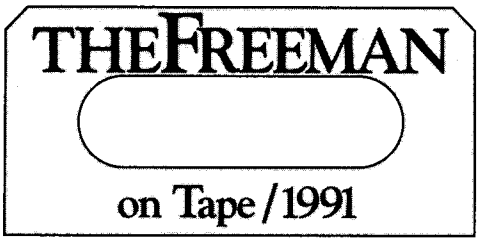

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PERSPECTIVE

Agricultural Policy

Agricultural policy in the United States is in a mess, to put it mildly. It is costly; it is controversial; it is counterproductive.

Federal income transfer payments to farmers have been at near record levels, but news stories persist of farm failures, pressures on agribusiness firms, and the need for new rural development initiatives.

Commodity group is set against commodity group as grain producers seek higher prices and livestock producers grapple with artificially stimulated feed prices.

Our grain and cotton producers are geared to produce for the export market, but they are tied to governmental price and production programs designed primarily for the domestic market. Their first market, too often, is essentially a government bin or a government warehouse.

In several states last year, farmers got more than half of their net cash farm income in the form of a government check. . . .

It is instructive to note that only about 40 percent of U.S. farm commodities are under effective price support. Non-price supported commodities include cattle, hogs, poultry, fruits and vegetables and, until recently, soybeans. These commodities, in the main, have been profitable. They don't cost the Treasury large sums of money. Producers are free to expand or contract as they choose. They need not seek "permission" from the county ASCS office to plan the scope of their operation. They have expanded their markets.

The troubled areas are precisely those commodities that have had the largest degree of governmental price intervention. These include feed grains, food grains, cotton, peanuts, sugar, and tobacco. These are the commodities that have suffered market loss and have borne oppressive production and marketing controls.

Basic Observation: The higher the degree of governmental involvement in pricing and marketing, the deeper the economic pit in which the commodity wallows.

—Earl L. Butz, Dean Emeritus of Agriculture, Purdue University. This is from a summary of his remarks delivered on July 28, 1990, in Abilene, Kansas.

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Meeting of the Minds

Drink tea, and you give a friendly pat on the back to the people of India or Sri Lanka. Eat a banana and you stroke the people of Ecuador or Costa Rica. Bite on a bar of chocolate and you help add dignity to the people of Ghana or the Ivory Coast. Fly Lufthansa, Alitalia, or Japan Air and you advance our relations with our former adversaries, the once-Axis Powers of Germany, Italy, and Japan. Motor down the highway and you just may be something of a goodwill ambassador to Saudi Arabia, Venezuela, or Indonesia.

Even local frictions and antagonisms tend to be smoothed over and calmed down through marketplace voting. Catholics and Protestants trade with each other—i.e., vote for each other!—in Belfast, as do Malays and Chinese in Kuala Lumpur, Hindus and Moslems in Bombay, Arabs and Jews in Jerusalem, blacks and whites in Johannesburg. For to a very great extent, the marketplace is color-blind and bias-free in a one-on-one global meeting of the minds.

—WILLIAM H. PETERSON,
speaking at Gettysburg College,
September 27, 1990

The Chess Men

Adam Smith, in *The Theory of Moral Sentiments*, compares central planners to chess players:

"The man of system . . . is apt to be very wise in his own conceit; and is often so enamored with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong prejudices which may oppose it. He seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be at all-times in the highest degree of disorder."

As we examine U.S. policy in the Middle East, Smith's words return to mind. Do not, in fact, State Department strategists view the Middle East as a giant chess-board, as they decide whom to subsidize, whom to arm, whom to attack, and whom to try to turn against whom?

Central planning has failed around the world. Trying to play chess with nations hasn't worked very well either.

—BRIAN SUMMERS

Soviet Freedom of the Press

The current situation is that the state possesses a monopoly on printing presses, paper, and distribution facilities; and the success of a publication depends less on the marketplace than on its relationship with the state. Such freedom of the press is no more than a Soviet propaganda bluff unless the owners of new media enterprises gain entrepreneurial freedom. There is little point in having the right to reach a mass public without also having the right to organize the effort so that it can endure. A free press will not long remain free if its editions appear only on state paper and are printed only on state printing presses at the pleasure of state agencies.

—ALEXANDER PODRABINEK, writing in the June 26, 1990, issue of the *Express-Chronicle*, a pro-democratic newspaper published in Moscow. Translation by the Center for Democracy in the U.S.S.R., 358 West 30th Street, New York, NY 10001.

Reader's Digest Reprints China Article

"*Kun Shou You Dou:* Even a Cornered Beast Will Fight," by Marcella Smith, has been reprinted in the March 1991 issue of *Reader's Digest*. This article originally appeared in the December 1990 issue of *The Freeman*.

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IDEAS ON LIBERTY

Transforming the Command Economies

Hans F. Sennholz

To transform a Communist system into a market order is like trying to reform a person suffering from alcoholism or drug addiction. The addict, knowing little of healthful living, has developed a multitude of physical and psychological deficiencies and dependencies. When he finally musters the strength for reform, he soon suffers the symptoms of withdrawal such as weakness, trembling, and mental depression. The discomfort and pain then cause him to return to his addiction.

Despite all the talk about transformation to a market order, progress is lacking almost completely in the Soviet Union and is limited rather narrowly in the satellite countries such as Poland, Czechoslovakia, Hungary, Romania, and Bulgaria. Although most Communist leaders solemnly acknowledge that an eventual systemic change is necessary, they are afraid of many aspects of the market order of which they know so little. In particular, they are fearful of mass unemployment and other forms of "exploitation of the weak and poor" which, they are convinced, are clear results of capitalism. This fear is echoed by a diverse chorus of ex-Communists, socialists, social democrats, and erstwhile central planners who, despite their free market rhetoric, are addicted to the old order.

President Gorbachev and his followers are deploring the "extremely high costs" of transforming the command economies. They are warning of the economic crashes and disruptions that "radical restructuring" is said to bring about. They point with alarm at Poland's gross national product which is reported to have declined by 16 percent since an economic reform program was initiated in January 1990; unemployment is said to have risen to one million, and goods prices allegedly outpaced wages by 35 percent. Wherever they look, they seek and find reasons or excuses for delaying and temporizing.

In reality, the costs and pains of transition are minimal provided the transformation is swift and comprehensive. When man is free to improve his well-being he does so without delay, even on the first day of reform. He does so in Budapest as well as in Moscow. Every 1990 reform that actually set him free, therefore, immediately improved his economic condition—no matter what the statisticians want us to believe.

The economic data that the Eastern European governments are so quick to release are flawed for a number of reasons. They rest on the spurious statistics of output and income of the prior command system which are compared with the real levels of productivity in the fledgling market order. Poland's 16 percent decline in GNP is calculated from pre-reform Communist statistics that were greatly overstated. After all, economic command systems, lacking the guidance of market valuation and pricing, always operate in the dark, unable to compare the value of input with the value of out-

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put. Their production statistics include much physical but valueless output, such as clothing no one can wear or food no one can eat. Similarly, since the statistics of command production have to meet quantitative norms rather than produce valuable items for the market, they fail to allow for inferior product quality. And finally, Communist statistics are frequently based on faulty reporting—the embellishment of data to meet or exceed the expected quotas. The central authorities then further "improve" the faulty data for propaganda purposes.

Before Communist East Germany was reunited with West Germany, its per-capita GNP was reported at 88 percent of that of West Germany. Recent estimates suggest that the Communist figure was overstated by more than 50 percent. If this rate of overstatement holds true also in Communist Poland, the reported 16 percent decline in GNP since the inauguration of reform may actually signal a significant rise in production and income.

The unemployment statistics that frighten the reformers are equally misleading. They compare the rates of unemployment that become visible today with the make-work, featherbedding, and pay-without-work unemployment that is hidden in all political command systems. They reveal the truth that heretofore was hidden behind the veil of Communist fiction and probably indicate real improvement in productive employment.

Finally, the post-reform inflation that is laid on the doorsteps of the market order is completely misplaced. It actually springs from the hidden inflationary practices of the command regimes. When goods prices are set free after many years of command pricing, they immediately adjust to the true state of affairs. Soaring prices promptly remove the money "overhang" left by the previous system, solve the goods shortage that constitutes a money surplus, and eliminate the long queues of people waiting patiently to buy a few shabby items. The inflation the reformers lament clearly is the inevitable consequence of command policies.

Price inflation may also be the undesirable result of current money creation and credit expansion. The reformers, most of whom are ex-Communists and socialists, continue to wield complete control over their country's money and banking structure. For one reason or another they indulge in massive deficit spending which they easily finance through the issue of large quantities of monopolistic legal-tender money. The subsequent rise in goods prices is foreseeable and unavoidable. Yet the reformers are quick to place the blame for the rise on the private-property individual-enterprise system.

Reform is a test of beliefs. It must be preceded by a profound acceptance of the values and principles of the market order. Otherwise, all efforts will be futile, and the new social and economic edifice will be built on the shifting sands of the command system.

Five Steps of Reform

To transform a Communist economy to a private-property economy is a formidable but tractable undertaking. The tractability requires five steps of reform that need to be taken simultaneously or in short order:

1) The Communist regime must relinquish direct and indirect control over the people's money and credit. The central bank that issues monopolistic legal-tender money must be abolished or, at least, be prevented from engaging in inflationary practices.

2) The regime must relinquish all manifestations of control over the capital market. Therefore, it must exert budgetary discipline and abstain from draining and mutilating the capital market.

3) All price, wage, and rent regulations, which are really people controls, must be abolished so that consumers rather than politicians and officials determine the mode of production and rewards. Free prices must be permitted to restore the link between consumers and producers and allocate income according to costs and productivity.

4) All means of production now owned or controlled by the regime must be privatized forthwith. They may be returned to the individuals and their heirs from whom they were seized or, if no heirs can be found, be distributed among the workers who use them. The new owners, in turn, must be free to sell their shares in the capital market.

5) To link the transforming economy to the world economy and to international competition, all import and export restrictions must be lifted and the people be permitted to exchange their goods and services with people everywhere.

To focus on one or another of these steps and exclude the rest is to invite failure and disappoint-

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ment. It may even lend strength and support to the enemies of reform who would love to repair their power of command and restore the old system. All five steps need to be taken simultaneously or in short order so that the market order emerges unhampered and unimpaired and is permitted to function efficiently.

Omitting a single step may jeopardize the reform. The money monopoly in the hands of government is likely to lead to soaring inflation and monetary disintegration. Continuing control over the capital market may permit government to engage in massive capital consumption, to exhaust and deplete the market, and cause economic stagnation and decline. Price, wage, and rent controls would prevent the readjustment of production to consumer choices and preferences. Government ownership of the means of production would continue to breed inefficiency and corruption and protect officials and servants from the fresh air of competition. It would deprive the people of competent services and burden taxpayers with the losses incurred by the public enterprises. Finally, continuation of export and import restrictions would deprive the people of the tremendous advantages that flow from the international division of labor.

A move toward reform is simply the result of ideas of reform taking hold on the mind. Such ideas are burgeoning throughout the Communist world, no matter what the detractors may do to stifle them. Many mistakes are likely to be made on the road to individual freedom and the private-property order. Yet mistakes provide opportunities for learning and lessons in wisdom. □

1990-91 Essay Contest Winners

"A World Without Walls:
Prospects for Freedom in Eastern Europe and China"
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COLLEGE DIVISION

First Prize ($1500): Joel Frederick Kluender, University of Connecticut, Storrs, Connecticut, "The Prospects for Freedom"

Second Prize ($1000): Paul Cwik, Hillsdale College, Hillsdale, Michigan, "From the Tops of Mountains"

Third Prize ($500): Howard S. Hogan, Georgetown University, Washington, D.C., "The Rewards of Freedom"

HIGH SCHOOL DIVISION

First Prize ($1500 Scholarship): Ilya Somin, Lexington High School, Lexington, Massachusetts, "Freedom for Its Own Sake: Liberty and Eastern Europe"

Second Prize ($1000 Scholarship): Candi Delgatty, Jack C. Hays High School, Kyle, Texas, "Opening the Door to a Free Society"

Third Prize ($500 Scholarship): Laura M. Hertel, Brookfield Central High School, Brookfield, Wisconsin, "Free Market Incentives and Freedom"

Honorable Mention: Michael Saller, Glenbrook High School, Glenview, Illinois, "Ulrich"

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Germany: The Promise of Freedom

by Donald J. Boudreaux and Thomas K. Plofchan, Jr.

In September 1990, less than a year after the Berlin Wall came crashing down but before the official reunification of Germany, we visited both West and East Germany as participants in the eighth annual Multiplikatoren Seminar. This seminar, which is sponsored by the West German government, brings together young American and German professionals in order to create personal, cultural, business, and intellectual ties between the United States and Germany. Of course, the fall of Communism and the reunification of Germany dominated the discussions of the 1990 seminar.

Visiting Bonn and Berlin during this very exciting time in Europe's history provided unique insight into the events of the past year in Germany and in those nations that just recently escaped the totalitarian stranglehold of Communist rulers. This essay identifies lessons culled from our visit to Germany—lessons applicable both to emerging and to established democracies.

Lesson 1: Communism failed miserably.

Communism's failures are evident everywhere. The most memorable moments of our visit occurred in Berlin where, because West Berlin's hotels were still filled to capacity with refugees who had fled Communist rule, our German hosts put us up in East Berlin's Hotel Unter den Linden. This hotel is said to be among East Berlin's finest, and indeed, East Germany's premier rock star was a guest while we were there. Upon arrival at the Hotel Unter den Linden we saw firsthand the glories of Communism.

The rooms in this hotel are about the size of a large walk-in closet. We do not exaggerate. A bed here is nothing more than an elevated piece of plywood with an aged and thin pad laid across the top. The linen is threadbare and stained, as are the towels in the bathroom. Whenever a light is turned on, dozens of cockroaches can be seen scampering across the furniture and the floor. In one of our rooms, the window could not be closed, much less locked. Hot showers had to be taken no later than 6:45 A.M. because by 7:00 all the hot water is gone until mid-afternoon. Of course, less-than-luxurious hotels can be found in capitalist societies as well, but such hotels are never billed as being among the finest accommodations available.

Other aspects of our visit provide a more telling contrast between capitalist and Communist societies. Perhaps the greatest testament to Communist "efficiency" is the lack of technical services that citizens of capitalist nations take for granted. When one of us attempted to place a wake-up call to the other, whose room was two floors up, this proved to be impossible. Forget about direct room-to-room dialing; it doesn't exist. So the caller tried to place the call through the hotel operator (who, thankfully, spoke reasonably good English). The caller asked the operator to ring room 602. After several minutes of clicking and clanging, the operator apologized for not being able to complete the call. The operator calmly explained that the

Don Boudreaux and Thomas K. Plofchan, Jr., are studying law at the University of Virginia. Mr. Plofchan is also a Ph.D. candidate in the Government Department at the University of Virginia and is the U.S. Director of the Multiplikatoren Seminar.

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"sixes" in the hotel's telephone switching system weren't working that day!

The lack of modern telecommunications was also apparent when trying to call outside the hotel. One member of our party, dialing direct from West Berlin, made a three-minute call to the United States. The price was $6.50. At the same time on the following night, this person placed the same three-minute call from our hotel in East Berlin. But because there is no direct dialing from East Germany to the U.S., the call was placed through the hotel operator. The price was $28!

Despite our hotel's shortcomings, it had the virtue of being located less than a mile from where the Berlin Wall once stood. (Incidentally, the official East German name for the Berlin Wall was "the anti-fascist wall of protection." The idea was that the Wall was protecting the citizens of *East Germany* from the capitalist hordes of the West.) Within minutes we were able to walk from ugly and poor East Berlin into attractive and prosperous West Berlin where even the third-class hotels appear to be immensely more comfortable and convenient than East Berlin's finest.

We spent a good deal of time walking between East and West Berlin. It did our bourgeois hearts good to stroll freely through Checkpoint Charlie—now nothing more than abandoned and dilapidated buildings. These buildings, however, still echo their horrible past when Communist border guards barked out commands and stood ready to shoot any East German for the crime of seeking to live as a free man or woman. These same border guards also caused Western visitors to East Berlin to undergo agonizing minutes (and sometimes hours) of interrogation and intimidation before being allowed access into the supposed workers' paradise of Communist East Germany.

But now, standing silent, the buildings at Checkpoint Charlie no longer house impediments to the movement of people and goods. The first time we crossed this former border we were overcome with elation at Communism's recent demise. Millions of people once held hostage in their own land are now free to go where they please, think as they please, work as they please, play as they please, and to own private property and contract freely with others. This thought was inspiring. However, the second time we walked through Checkpoint Charlie anger tempered our elation—anger at the thought of the atrocities committed by the border guards who not so long ago occupied these crumbling buildings, and even more anger at the thought of the despots who gave authority to these guards.

Lesson 2: People who have experienced Communism prefer capitalism.

Of course, Checkpoint Charlie is not the only part of the Berlin Wall to have crumbled. The entire Wall is now all but completely down. In one of history's great ironies, the Wall is now being sold in pieces to Western tourists by Germans from the east, Poles, and Turks who operate unregulated stalls along its former path. In addition to selling pieces of the Wall, these upstart entrepreneurs are also quite happy to sell to the highest bidder genuine East German and *Soviet* army uniforms.

An anecdote aptly illustrates the new-found entrepreneurial spirit that for so long was suppressed by Communist government. As may not be known in the U.S., the western side of the Berlin Wall was covered with graffiti while the eastern side was bare. Since the revolution of November 1989, however, the market has revealed a greater demand for colored pieces of the Wall chipped from the western side than for bare pieces chipped from the eastern side. We witnessed entrepreneurs from the eastern section of Berlin approaching the eastern side of the Wall, spraying it with paint, and then chipping off pieces in order to better meet the demands of tourists. Innate entrepreneurial abilities are awakening at great speed in the formerly Communist section of Germany. It is significant that not only is Communist rule dead in Germany, but its symbols are being sold for Western currency in a very free and competitive market.

The overthrow of the Communist regime in East Germany allowed liberty and the free market to gain a toe-hold in East Berlin even before reunification had been officially achieved on October 3, 1990. In East Berlin, just a few yards from Checkpoint Charlie, a new Chinese restaurant recently opened. This restaurant looks like many of the Oriental eateries that are found in West Berlin and all over the free world. Its name is written in bright and bold neon; its interior decor is quite elegant; and its front door sports signs that proudly announce the restaurant's policy of accepting Visa, MasterCard, American Express, and Diners' Club credit cards.

In addition, just across the street from this restaurant is a newly opened travel agency. Dis-

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COURTESY OF THOMAS K. PLOFCHAN, JR.

Since the revolution of 1989, the market has revealed a greater demand for colored pieces of the Wall chipped from the western side.

played in its window was a poster of a beautiful woman lying on the sands of a tropical beach. The poster advertises TWA flights to Hawaii. The travel agency also accepts all major credit cards. The new Chinese restaurant and the travel agency are solid evidence that capitalism has begun to creep into the eastern part of Berlin. It is only a matter of time before capitalism's creep will turn into a surge bringing greater prosperity and liberty to all the citizens of what used to be called the "German Democratic Republic."

Lesson 3: Rejuvenation cannot happen overnight.

Regardless of how bright East Germany's economic future may be, signs of its horrible centrally planned past remain evident. For example, under Communism's iron fist, only 7 percent of East German households had telephones. Though this no doubt will improve in the future, it currently is still quite difficult (as described earlier) to make a phone call from anywhere in East Germany. Another example of socialism's utter inability to provide for its citizens is seen in the bullet holes that today still mark many of East Berlin's buildings. These bullet holes—hundreds of them in each building—were put there by the invading Soviet army in 1945. Most of these buildings haven't been repaired, renovated, or even painted since World War II. The amount of capital required to bring this former "Communist jewel" up to minimum Western standards is awesome.

The East German automobile is evidence enough of Communism's grotesque inefficiencies, as well as of the effort required to establish a productive economy in eastern Germany. Called the Trabant, this car was nearly the only personal automobile found on East German roads during the three decades preceding the 1989 revolution. The Trabant looks like an early 1960s economy car. Trouble is, it is far from economical. Its selling price was equal to the average yearly wage for an East German worker. And the waiting list for a Trabant was approximately 10 years for citizens of East Berlin and 15 years for citizens of other parts of East Germany.

Once an East German finally acquired a Trabant, he needed more than 30 seconds to accelerate from zero to 60 miles per hour. According to *Car and Driver* magazine, this acceleration rate is

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"slower than anything not rolling on eighteen wheels." A healthy Trabant's maximum speed is a measly 66 miles per hour. Also, in addition to being a pollution machine, the Trabant is dangerously unsafe.[1] A West German reported to us that, not long after the fall of the Wall, he was driving on a West German autobahn at night when he saw a flickering light just ahead. He slammed on his brakes. Moments later he realized that the flickering light he stopped to avoid was a lone *candle* in the rear window of a slowly moving Trabant. The candle was serving as the Trabant's taillight! The Trabant undoubtedly makes even the worst American or Japanese car built in the past half-century look like an auto connoisseur's dream.

With production facilities capable of producing only the level of "quality" evidenced by the Trabant, much time, money, and effort must be expended before the eastern part of Germany will be able to compete with the West. Nevertheless, it is promising that eastern Germans now have the opportunity to compete without the heavy shackles of Communism weighing them down.

Lesson 4: A reunified Germany poses no threat to world peace.

Although there are obstacles to overcome, the Germans want the citizens of other democratic countries to look favorably upon their reunified nation. They want non-Germans to understand that there is little threat of the rise of a militaristic German state. America and the rest of the world's democracies can trust a unified Germany because of two fundamental differences between today's Germany and the Germany of the pre-World War eras.

First, postwar Germany has joined the ranks of the world's most prosperous nations, and is integrated into the world economic order in a way that wasn't true during the first half of this century. Germany is a major exporter. Its economic prosperity is protected and furthered by production and trade with peoples of other nations. As long as Volkswagens and Braun coffee makers are crossing German borders into other countries, there is little threat that Germany will send missiles and bombs across these same borders. No economically prosperous nation increases its wealth by bombing its trading partners.

Second, today's Germany is a constitutional democracy in which the military is solidly under civilian control, and a system of checks and balances characterizes the German federal government. Democratic nations with such constitutional safeguards are not likely to be militarily aggressive.

Because of these characteristics, which differentiate present-day Germany from its past, Germans realize that military aggression is unproductive and would only lessen the world economic influence that their post-World War II leaders have worked so hard to acquire. The not-uncommon suggestion that Germans are especially disposed to sacrifice their wealth and position in the world economic order because of some expansionist forces inherent in German blood is nothing more than a reflection of naive racism.

Conclusion: Germany's future is bright for Germans and for all free people.

Of course, the most direct beneficiaries of the death of Soviet-dominated Communism in Europe will be the people who were prisoners of those totalitarian regimes. But people from every nation that trades with Germany and other former Communist countries will have their lives improved by the burial of Communism. Eastern Germany's future promises hard work, to be sure, but it also promises freedom and prosperity for a people who have long been thirsting for both. In their attempts to quench their thirst, former captives of the Communist regime in eastern Germany will create wealth and prosperity which, through their trading practices with other nations, will be shared with the entire free world. □

1. *Car and Driver*, December 1990, pp. 89-97. The quotation in the text is found on page 94. This article also reports the result of their Trabant road test. Not surprisingly, the car received an incredibly low score.

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Unsafe at Any Speed: The Case of Repetitive Motion Injuries

by John Hood

One of the hottest issues on the social activism circuit is "repetitive motion injury." It refers to any of several workplace hazards of the modern economy: stress on arms and shoulders from working on computers, muscle pulls and injuries related to sorting mail or gutting chickens. A host of interest groups has sprung up across the country to organize class-action suits and push for legislation regulating "repetitive motion" workplaces. Late last year, San Francisco enacted the nation's first comprehensive ordinance regulating video-display terminals (computers), mandating certain work-station designs, and guaranteeing aid to workers injured by constantly working on VDTs.

At first glance, the problem seems real enough. The Bureau of Labor Statistics reports that repetitive motion injuries made up 48 percent of 241,000 workplace illnesses in 1988, up from 18 percent of 126,000 illnesses in 1981. Thus both the actual number of such injuries and their share of total workplace illnesses rose significantly during the 1980s.[1]

The culprit, say the pro-regulation forces, is automation, which has replaced heavy-lifting, manual-labor jobs with high-speed tasks. Indeed, automation is a symptom of other trends, according to Peter Kilborn of *The New York Times*: "Experts say the actual number of injuries are proliferating because people are being pressed to work hard—in private industry to keep up with foreign competition, in government to hold down spending."[2] If competitive markets and fiscal restraint are the problem, then regulation and government spending must be the solution.

The flaw in this analysis is a familiar one: static thinking. If automation changes the demands of a job from heavy lifting to speedy typing, simply documenting the harms of speedy typing won't prove the existence of a new workplace hazard. The true measure of safety would be to compare accident and fatality rates of heavy lifting with those of speedy typing. As it turns out, the National Safety Council reports that during the 1980s, the chance of *dying* from a workplace injury fell almost 30 percent.[3] It's not hard to see why. Operating the levers of a crane at a construction site may put significant strain on the fingers, but carrying dirt and gravel on your back is liable to cause more serious injury. Similarly, keeping copious corporate records on computer may cause hand and eye strain, but it reduces the number of times heavy boxes or cabinets must be lifted and moved.

Even if modernity has increased overall danger to workers, the idea that government regulation is the answer should be viewed with great skepticism. First of all, workplace safety regulations disproportionately affect small firms because there is a fixed cost to implementing design changes or other measures that are beyond their means.[4] Moreover, one reason small businesses haven't striven to reduce repetitive motion injuries is that state-regulated markets for workers' compensation

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insurance don't encourage such changes. Insurance companies generally have the expertise and the incentive to identify design and operation changes that would reduce injuries, but they have no incentive to compare the costs of those changes with their benefits to workplace safety.

That's the job of the firm. In a free market, firms would implement only the most efficient changes—those for which the safety gains exceed the costs of implementation. If they implemented every change insurers suggested, insurers could gain from fewer claims but firms would pay exorbitant and unwarranted costs. If they implemented no changes, insurance firms facing potentially numerous and expensive claims might withhold coverage.

State-Regulated Insurance Harms Incentives

But in state-regulated insurance markets, all firms must have insurance. Even if firms completely ignore safety concerns, they still retain their coverage—and in most states their rates are no higher than those of safety-conscious firms, since rates are also regulated. Because firms cannot benefit economically by experimenting with safer workplace designs, they don't experiment. Thus the problems activists attribute to competitive forces are actually caused at least in part by a *lack* of competition in workplace safety insurance.[5]

Another problem with regulation is that it imposes a "one-size-fits-all" mandate on situations that by their very nature are varied and unique. One firm might reduce repetitive motion injuries most effectively by changing shifts, production timetables, or other schedules. Other firms might redesign work stations and pass some of the costs along to workers in the form of delayed pay raises or reductions in other benefits. There is no single solution to a dilemma generated in the give-and-take of economic actors—workers, firms, insurers—in a free market. Workers can, after all, choose not to work for a firm that doesn't care about their safety—and whose poor safety record has made it uninsurable for workers' compensation (assuming, of course, that a free market exists for insurance).

There is another strong argument against the regulatory response. Study after study has documented that unemployed people are less healthy, more prone to injury (especially serious injury), and more prone to mental illnesses than their employed counterparts. So if regulation were somehow to cause workers to lose their jobs, there would be no net gain in safety, and instead a net loss.

In general, researchers have found that the costs of government regulation of the workplace—including unemployment—far exceed its benefits. University of Alabama economist Harold W. Elder found that "all increases in safety are paid for through lowered output and factor employment."[6] Examining the case of regulating asbestos exposure, University of Toronto researchers Donald N. Dewees and Ronald J. Daniels concluded that "the amount of asbestos to which a worker may be exposed yields a cost per life saved far in excess of the costs for occupational accidents."[7] On balance, such regulations cause decreased output, consumer price hikes, and unemployment, without significantly increasing worker safety.

Pro-regulation activists question such analyses by stating that economic costs should never be compared dollar-for-dollar with "human costs" such as injuries. But even if that were true (though it's hard to see any other way of assessing the desirability of regulation except by counting the number of lobbyists on each side), the fact is that regulation can *decrease* safety if it leads to unemployment and thus to the harmful effects of joblessness. And a related fact is that innovation and automation, when driven by the competitive market, tend to *reduce* the most serious dangers to workers—by replacing relatively hazardous tasks with non-hazardous ones. □

1. Peter T. Kilborn, "Repetitive-Motion Injury Plagues Workers," *The New York Times*, July 24, 1990.
2. *Ibid.*
3. Trish Hall, "Accident Death Rate Drops in '80s, Report Says," *The News and Observer* (Raleigh, N.C.), October 7, 1990.
4. Ann P. Bartel and Lacy Glenn Thomas, "Predation Through Regulation: The Wage and Profit Effects of the Occupational Safety and Health Administration and the Environmental Protection Agency," *Journal of Law and Economics*, October 1987, p. 257.
5. John T. Sholz, "In Search of Regulatory Alternatives," *Journal of Policy Analysis and Management*, 1984, p. 114.
6. Harold W. Elder, "An Economic Analysis of Factor Usage and Workplace Regulation," *Southern Economic Journal*, October 1987, p. 120.
7. Donald N. Dewees and Ronald J. Daniels, "The Cost of Protecting Occupational Health: The Asbestos Case," *The Journal of Human Resources*, Summer 1986, p. 381.

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Homosexuality's Legal Revolution

by Carl F. Horowitz

Last April, a brief series of events occurred in a Madison, Wisconsin, restaurant that spoke volumes about the current character of the homosexual rights movement. An employee of the Espresso Royal Cafe asked two women—presumably lesbians—to refrain from passionately kissing as they sat at a window table. Madison's gay community was not amused. The very next day, about 125 homosexual demonstrators showed up on the premises, and conducted a "kiss-in" for several minutes. A spokeswoman for the protesters, Malvene Collins, demanded, "You say gays and lesbians cannot show affection here? Why not here but in every other restaurant in Madison?" The establishment's chastised owner, Donald Hanigan, assured the crowd, "I regret that this incident ever happened. I want all of you to come in here every day."[1]

In October, several dozen homosexual males, many of them dressed in women's clothing, openly hugged and kissed in a terminal of Seattle-Tacoma Airport, and handed out condoms and leaflets to travelers. Matt Nagel, spokesman for the Seattle chapter of a new homosexual organization, Queer Nation, seemed to sum up the feeling among militants in the local homosexual community. "We're going to homophobic bars, we're going to pack them, we're going to be openly affectionate, we're going to dance together and make it uncomfortable for all the straight people there."[2]

At the same time in Chicago, six homosexual couples staged a "kiss-in" at the cosmetics counter of a Bloomingdale's department store until they were escorted out by security guards. Far from being deterred, the couples shortly went down to the cafeteria of a nearby office building, where they resumed their public display of affection.[3]

A Bid for Legitimacy

After some two decades of confrontation, the homosexual rights movement is consolidating its bid for legitimacy. The phrase, "Out of the closet, and into the streets," sounds quaint. That battle has already been won. Openly homosexual adults are certainly in the streets—and in stores, airports, and "homophobic" bars. Openly gay television characters, each with handsome, well-scrubbed looks, populate daytime and evening drama. Gay-oriented news programming is available on radio and television. Homosexual activists have all but completed their campaign to persuade the nation's educational establishment that homosexuality is normal "alternative" behavior, and thus any adverse reaction to it is akin to a phobia, such as fear of heights, or an ethnic prejudice, such as anti-Semitism.[4]

The movement now stands on the verge of fully realizing its use of law to create a separate homosexual society paralleling that of the larger society in every way, and to intimidate heterosexuals

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uncomfortable about coming into contact with it. Through aggressive lobbying by such gay organizations as the Human Rights Campaign Fund, the Lambda Legal Defense and Education Fund, and the National Gay and Lesbian Task Force, the first part of that mission has enjoyed enormous success. About 90 counties and municipalities now have ordinances banning discrimination on the basis of gender orientation. There are roughly 50 openly gay public officials, up from less than a half-dozen in 1980.[5]

Gay couples are increasingly receiving the full benefits of marriage, if not through state recognition of homosexual marriage ceremonies, then through enactment of domestic partnership laws.[6] The State of California recently took a big step toward legalization of such marriages: this December it announced that "non-traditional" families, including homosexual couples, could formally register their unions as "unincorporated non-profit associations."[7] Divorced gay parents are receiving with increasing frequency the right to custody of natural children. Gay adults without children are increasingly receiving the right to adopt them. Aspiring homosexual clergy are demanding—and receiving—the right to be ordained. Openly gay teachers are teaching in public schools. Homosexual soldiers, aware that their sexual orientation is grounds for expulsion from the military, openly declare their proclivities.

A Federal gay rights bill is the ultimate prize, and homosexual activists are blunt and resolute in pursuing such legislation. For example, Jeff Levi, spokesman for the National Gay and Lesbian Task Force, remarked at a press conference coinciding with the national gay march on Washington in October 1987:

> . . . we are no longer seeking just a right to privacy and a protection from wrong. We also have a right—as heterosexual Americans already have—to see government and society affirm our lives. . . . until our relationships are recognized in the law—through domestic partner legislation or the definition of beneficiaries, for example—until we are provided with the same financial incentives in tax law and government programs to affirm our family relationships, then we will not have achieved equality in American society.[8]

Yet, homosexual activists know that this legal revolution will never succeed without the unpleasant task of coercing heterosexuals into masking their displeasure with homosexuality. It is thus not enough merely to break down all existing barriers to homosexual affection being expressed through marriage, child-rearing, or employment. The law must additionally be rewritten to make it as difficult as possible for heterosexuals to avoid contact with such displays, or to show discomfort toward them.

This two-edged approach would create a world in which stringent laws at all levels, aggressively enforced and strictly interpreted, force business owners to refuse to discriminate against the openly homosexual in patronage, leasing, and hiring. Removing overtly homosexual patrons from a bar, an airport, or any other public space would result in heavy fines and even jail sentences against property owners or their employees (or in lieu of these sanctions, mandatory purgation). Derogatory remarks directed at homosexuals, even with sexuality only incidental, would likewise result in criminal penalties.

1990: A Pivotal Year

The year 1990 was pivotal for the homosexual legal revolution. The states of Massachusetts and Wisconsin in the late 1980s had enacted laws forbidding discrimination against homosexuals. The victories would come quickly now, especially at the local level. In March, the City of Pittsburgh voted to include sexual orientation as a right protected under the City Code. In October, Stanford University allowed homosexual couples to qualify for university student housing. In November, voters in San Francisco, buoyed by a heavy turnout of that city's large gay population, produced a "lavender sweep," not only passing Proposition K, a city initiative to allow homosexuals to register as domestic partners at City Hall (a similar measure was defeated in 1989), but electing two openly lesbian candidates to the City Board of Supervisors, and an openly homosexual male candidate to the Board of Education.

Voters in Seattle refused to repeal an existing gender orientation ordinance. Congress did its part early in the year by overwhelmingly passing the Hate Crimes Statistics Act (or Hate Crimes Act), which requires the Justice Department to publish hate crime statistics accord-

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ing to classifications that include sexual orientation.[9]

This agenda would likely have been even further realized with Michael Dukakis as President. In 1988, his Presidential campaign organization placed an advertisement in a New York homosexual newspaper, pledging, "As President, I will fight for Federal legislation to add a prohibition against discrimination based on sexual orientation to the existing protections of the 1964 Civil Rights Act."[10] Rank-and-file pressure on even a centrist Democratic Presidential candidate would be difficult to fend off. Rule 5C of the National Democratic Party currently states: "With respect to groups such as . . . lesbians and gay men . . . each state party shall develop and submit party outreach programs for such groups identified in their plans, including recruitment, education and training, in order to receive full participation by such groups in the delegate-selection process and at all levels of party affairs."

For close to 20 years, old-time party regulars have been walking on eggshells on this issue, praying it would go away, yet never really having the stomach for open conflict. Now the day of reckoning looms. Democratic candidates and party officials opposing this recent requirement (none dare call it a quota) must be willing either silently to watch the slow disintegration of their party, or to speak out and face de facto expulsion. It is therefore not surprising that all candidates for the Democratic Party Presidential nomination in 1988, in response to a questionnaire circulated by the National Gay and Lesbian Task Force, promised to support a Federal gay rights bill.

Republicans offer only little more resistance. The few among them who do speak out against the homosexual lobby—most notably, U.S. Representative William Dannemeyer of California—enjoy little support from their party.[11] One need only remember how reluctantly and belatedly Congress acted merely to reprimand U.S. Representative Barney Frank, Massachusetts Democrat, for aiding a male roommate in running a prostitution service from the basement of his Washington, D.C., townhouse. One need only remember also how quickly a Bush White House official, Doug Wead, who circulated a memorandum complaining of the high visibility of gay activists at the Hate Crimes Act signing ceremony, was fired from his post.

"Gay Civil Rights"

The homosexual lobby speaks of itself as struggling for "civil rights." "The gay community's goal is integration—just as it was with Martin Luther King," argues homosexual activist and San Francisco Board of Supervisors President Harry Britt.[12] Yet, underneath the surface, gay civil rights seems analogous to black "civil rights" *after* Reverend King's death. Far from seeking integration with the heterosexual world, it vehemently avoids it. More important, the movement seeks to win sinecures through the state, and over any objections by "homophobic" opposition. With a cloud of a heavy fine or even a jail sentence hanging over a mortgage lender, a rental agent, or a job interviewer who might be discomforted by them, homosexuals under these laws can win employment, credit, housing, and other economic entitlements. Heterosexuals would have no right to discriminate against homosexuals, but apparently, not vice versa. Libertarians as well as traditionalists ought to be troubled by this.

Consider a recent controversy in Madison, Wisconsin, as noted earlier a national bastion of "enlightened" attitudes. Three single women had recently moved into the same apartment, and one announced that she was a lesbian. The other two, not unreasonably, asked her to move. The lesbian filed a grievance with the local Human Rights Board, and, predictably, won. The shock came in the punishment. The two heterosexual women had to pay $1,500 in "damages" to the lesbian, send her a public letter of apology, attend a two-hour "briefing" on homosexuality (conducted, needless to say, by homosexuals), and submit to having their living arrangements monitored for two years.[13]

With such laws in effect, this outcome would not be so much played out as simply avoided. Let one hypothetical example suffice, one that no doubt *has* been played out regularly, and that goes a long way in explaining why in any metropolitan area gays tend to cluster in a few neighborhoods.

A man enters an apartment rental office, inquiring about a vacancy. He openly indicates he is a homosexual, or at least implies as much through certain mannerisms. For good measure, he brings along his lover. The rental manager fudges, clears his throat, and says, "Well, er, several people are looking at the apartment. Call me later." An hour later, a second man, alone, walks in. He does not

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WIDE WORLD PHOTOS

Members of the group ACT-UP march through New York's Grand Central Station.

announce his sexuality. Who gets the apartment?

In the absence of gay protectionism, and assuming equal incomes, the manager (sighing with relief) would probably award the apartment to the second applicant. Gay militants would cry, "Discrimination!"—and miss the point. Discrimination based on sexual orientation is fundamentally different from that based on race. Homosexuality constitutes a behavioral, not a genetic trait. It is within the moral right of a landlord, job interviewer, banker, or anyone else performing a "gatekeeper" function to discourage economically risky behavior, sexual or otherwise. Libertarian columnist Doug Bandow articulates this:

> The point is, homosexuals have no right to force others to accept or support their lifestyle. Certainly government has no business discriminating against them: Anti-sodomy laws, for instance, are a vicious intrusion in the most intimate form of human conduct. And gays who pay taxes have as much right to government services and employment as anyone else.
>
> But someone who decides to live openly as a homosexual should accept the disapproval of those around him. For many Americans still believe that there is a fundamental, unchangeable moral code by which men are to live. . . .
>
> Using government to bludgeon homophobics into submission is even more intolerant than the original discrimination.[14]

Under normal circumstances, the rental manager would not want to lease to gays who, once moved in, might tell their friends that the neighborhood could have possibilities as a "gay" one. Word-of-mouth travels fast within their world. Beyond a certain "tipping-point," many heterosexual residents near and within the complex, rather than risk feeling stigmatized, would choose to move. Their places largely would be taken by overt homosexuals.

In fact this is exactly how neighborhoods such as Castro (San Francisco), West Hollywood (formerly part of Los Angeles, now separately incorporated largely due to gay pressure), the West Village (New York City), and Dupont Circle (Washington, D.C.) all rapidly developed reputations as "gay neighborhoods," and how large sections of Martha's Vineyard, Fire Island, and Rehoboth Beach became

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"gay resorts."[15] The tipping-point principle also applies to public facilities such as restaurants. At the Grapevine Cafe in Columbus, Ohio, for example, heterosexual customers stopped coming when the clientele became heavily gay.[16]

What would happen with a sexual orientation law in place? The rental manager knows that if he turns down an openly homosexual applicant, he risks prosecution. Any rejection can serve as proof of discriminatory intent, even with factors such as length of employment, income, and previous tenant record taken into account.[17] In response to such a fear, the manager, though reluctantly, is likely to award the apartment to the homosexual.

For gay activists, therein lies the payoff. By codifying into law "protection" of homosexual mannerisms, they can intimidate gatekeepers into providing job security and housing for the openly homosexual. Thus, without necessarily mentioning anything about quotas or, for that matter, homosexuality, law in the U.S. is increasingly mandating *homosexual affirmative action*.[18] Such law has the same intent as the recently vetoed Kennedy-Hawkins Civil Rights Act.

Sexual Schism

If the homosexual rights movement is in large measure an affirmative action strategy, certain consequences should be evident, all of which already are on their way to being entrenched. Most obviously, American culture is experiencing a sexual schism as deep as any racial one. There are other damaging ramifications.

First, wherever such laws exist, they will attract homosexuals to the jurisdictions enacting them. Common sense dictates that any community laying out the welcome mat for homosexuality lays it for homosexuals, implicitly telling others to kindly step aside. Aside from legal protection, there is political strength in concentrated numbers. Most aspiring elected officials in San Francisco, for example, must now pay homage to the achievement of local gays, and show up at gay events. As Proposition K coordinator Jean Harris remarked following the November elections, "We've shocked the world and made history with this lavender sweep. . . . It's clear that if you don't get the support of the gay-lesbian community you're going to be in trouble."[19] While the homosexual voting bloc will never be a majority in any city, even San Francisco, it can wield enormous veto power over the objections of all other blocs.

Second, having learned the power of the gatekeeper role, many homosexuals will seek to become gatekeepers themselves. It takes no great stretch of imagination, for example, to understand that the growing number of college administrations severely punishing anti-gay harassment (even if such "harassment" takes no more sinister a form than a satirical campus newspaper editorial or cartoon) has much to do with the growing number of college administrators and faculty who are themselves homosexual (and possibly were hired on that very basis).[20] Nor does it take much imagination to understand that gay employers have more reason than ever to favor homosexuals in their hiring and promotion practices.

Third, these laws will create market bottlenecks. Heterosexuals and even "closeted" homosexuals will be at a competitive disadvantage for jobs and housing. For them, prices will be higher and wages lower than in the absence of such "safeguards." This is especially significant since gay culture is visible in high-cost cities such as New York and San Francisco.

Gays view economic victories to be won here, and few have been as resounding as the *Braschi* decision.[21] In July 1989, the New York State Court of Appeals ruled that a gay lover had the right to stay in his deceased partner's rent-controlled apartment because he qualified as a member of the partner's family, a decision recently upheld by the Appellate Division of the State Supreme Court. "We conclude that the term 'family,'" the lower court argued, "should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. . . . a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence."[22]

Gay activists understandably were elated at this imprimatur for homosexual marriage; they know household economics. Homosexual couples defined as "married" could reduce not only their housing costs, but also their income taxes (by filing jointly), pensions, and insurance premiums. They also would qualify for paid medical leave, spousal bereavement leave, and other employee benefits. At this writing, the San Francisco chapter of the

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American Civil Liberties Union is considering suing several locally based corporations that deny benefits to their homosexual employees' partners.[23]

Fourth, the new legalism will increase heterosexual anger—and even violence—toward homosexuals. Reports of "gay bashing" (the real kind) simultaneous with increased homosexual visibility cannot be a coincidence. What economist Thomas Sowell[24] and psychologist Stephen Johnson[25] have each revealed about racial affirmative action can apply to sexual affirmative action as well; unprotected groups, lacking recourse through rule of law, may resort to violence against innocent members of protected groups. Those who make it their bailiwick to monitor every incident of petty harassment of gays are impervious to any possibility that when laws force heterosexuals to bottle up dialogue, their feelings may erupt in more destructive ways. *Gay bashing, then, is in some measure a product of the very laws designed to punish it.*

The Language of Victimhood

The radical homosexual movement seeks centralization of state power in the name of "civil rights." What began as a demand for the state not to interfere against private homosexual behavior has evolved into a demand for the state to intercede on behalf of public homosexual behavior. In so doing, the movement has advanced further into the same totalitarian netherworld that various black and feminist movements also have come to occupy. In each case, activists proclaim "victim" status, malign the intentions of critics, and demand government entitlements that necessarily discriminate against others. "Once upon a time," syndicated columnist Paul Greenberg writes in *The Washington Times*, "civil rights were unifying and universal—a way to open society to the claims of individual merit. Now 'civil rights' becomes a code word for dividing society into competing, resentful groups."[26]

Gay militants know the cue-card language of victimhood. For example, Gara LaMarche and William B. Rubenstein write in *The Nation*, "The targets of the 1950s witch hunts were both Communists and other leftists, labeled 'subversives,' and homosexuals, labeled 'sexual perverts.' Today, as the cold war mentality collapses, enemies are again being found at home, but this time lesbians and gay men are leading the list."[27] With former President Ronald Reagan and Cardinal John O'Connor leading the list of personages in the "McCarthy" role, the authors can make believe this really is the 1950s.

Just as opposing current racial and ethnic civil rights orthodoxies inevitably invites being labelled "racist" and "ethnocentric," opposing the current homosexual orthodoxy almost guarantees being denounced as "homophobic." One is simply not free to not pay tribute to them. The few people willing to toe the line pay the consequences. Pete Hamill, hardly an ally of the hard Right, knows this too well. Having written a column in the August 1990 *Esquire* sharply critical of those aggressively politicizing their homosexuality (though with genuine warmth for his homosexual friends), he was subsequently subject to constant attack by ACT-UP (AIDS Coalition to Unleash Power) and other homosexual gendarmes.[28] When early in 1990, Martin Luther King III remarked in a speech in Poughkeepsie, New York, that "something must be wrong" with homosexuals, enraged gay leaders demanded (and got) an apology.

Heterosexuals need not even fire the first shot to invoke gay wrath. When a pair of Queer Nation activists disrupted the airing of the December 14, 1990, segment of *The Arsenio Hall Show*, they insisted that the host explain why so few of his guests were gay. Unappeased by Hall's assurance that many are, the activists continued their on-camera ranting for about 10 minutes. Hall, of course, must now bear the onus as a "homophobe."[29]

Gay activists may incessantly speak of their "rights," yet oddly care little for those of others. Articles in *Outweek*, a year-old tabloid dedicated to exposing homosexual liaisons (real or imagined) of public figures believed otherwise to be heterosexual, routinely call for removing freedom of speech from anyone alleged to be "homophobic."[30] A placard at a recent gay rights march in Washington read, "BAN HOMOPHOBIA, NOT HOMOSEXUALITY."[31] Radical homosexuals apparently do not reciprocate when it comes to the First Amendment.

The most shameful example of the gays' civil rights double standard, of course, was their temporarily successful attempt to blackball Andy Rooney, long-time humorist of CBS's *60 Minutes* program. The details of the saga—Rooney's allegedly anti-gay comments on a CBS news spe-

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cial reviewing the events of 1989;[32] the subsequent storm of protest by gay militants; Rooney's explanation to them in the form of a letter to and an interview with a national gay newspaper, the *Advocate*; the anti-black comments falsely attributed to Rooney in the interview; and his three-month suspension without pay from CBS—are well-known.[33]

Never mind that the interview was a pure frame-up, or that homosexual militants routinely make hate-filled denunciations of "straights." More ominous is how quickly CBS moved to institute damage control, choosing to take the word of a gay cub reporter, lacking any tape of the interview, over that of Mr. Rooney, a loyal and popular CBS employee for some four decades. This is how CBS, which now hires a homosexual group to conduct "gay sensitivity seminars" for its news personnel, responded to its fear of a lawsuit or a boycott of network sponsors. The network's action was an indication of how readily small businesses might capitulate under a Federal gay civil rights law.

Rooney, of course, was reinstated on *60 Minutes* before the three months, but no thanks to any good graces from CBS top brass. Give the credit instead to Rooney's supportive *60 Minutes* colleagues and the show's falling Nielsen ratings. Yet Rooney, chastened, had to issue a public apology prior to reinstatement, one that virtually forfeited his right to say "offensive" things about gays in the future, ironic since his job requires being cantankerously peevish. Free speech lost.

Homosexual militants also have little use for the right to privacy save their own. They view any public figure's possible homosexual behavior as grist for voyeuristic public consumption. The mere existence of a spurious scandal sheet like *Outweek* ought to outrage the sensibilities of all individualists. The hypocrisy of it all begs a comparison. Suppose the *National Enquirer* or some other general circulation gossip magazine exposed as homosexuals the very same celebrities that *Outweek* does. Homosexual activists would properly see this as character assassination. Yet apparently when a homosexual publication engages in the identical practice, it is creating "positive gay role models."[34]

"Now, the idea that one must be either in the closet or out of it is an invention of those who would politicize sex and abolish privacy," Thomas Short writes in *National Review*. "They wrongly make whatever is not publicly proclaimed seem secret, furtive. This dichotomy of being either in the closet or out of it should not exist. . . . We all have some secrets to keep."[35] Homosexual radicals do not keep sexual secrets. Since a homosexual act is political, even the most casual encounter by an otherwise heterosexual person must be made public, at whatever cost to that person. *Outweek*, and the mentality to which it caters, is more than indiscreet; it is totalitarian.

The Growing Threat of Violence

There is something about encountering homosexuality in its militant and pugnacious form that touches a deep, almost reflexive anger, even among most heterosexual liberals. That is why attempts at "mainstreaming" gay culture, even when holding an olive branch, are bound to fail. One of the saddest books to appear in recent years is *After the Ball: How America Will Conquer Its Fear and Hatred of Gays in the 90s*.[36] The authors, Marshall Kirk and Hunter Madsen, both homosexual, advocate a national campaign to cheerfully "sell" gay culture. They suggest, for example, that gay organizations buy up advertising space in "straight" newspapers with pictures of historical figures such as Alexander the Great, asking: "Did you know he was gay?"

Kirk and Madsen, like their surlier compatriots, fail to grasp that public homosexuality strikes at both a heterosexual's fear of loss of sexual identity and sense of belonging to a family. For even in this age of artificial insemination, families are not sustainable without heterosexuality. No matter how much the homosexual activist naively protests, "Gays are people, too," such a plea will receive in return grudging respect, and little else.

In a summary piece for *Newsweek's* March 12, 1990, cover story, "The Future of Gay America," Jonathan Alter revealed a rare understanding of this dynamic.[37] He notes, "'Acting gay' often involves more than sexual behavior itself. Much of the dislike for homosexuals centers not on who they are or what they do in private, but on so-called affectations—'swishiness' in men, the 'butch' look for women—not directly related to the more private sex act." Quite rightly so—one doubts if more than a tiny fraction of heterosexuals have even *inadvertently* witnessed a homosexual act. Alter then gets to the core of the issue. "Heterosexuals," he writes, "tend to argue that gays can downplay

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these characteristics and 'pass' more easily in the straight world than blacks can in a white world. . . . This may be true, but it's also irrelevant. For most gays those traits aren't affectations but part of their identities; attacking their swishiness is the same as attacking *them*."

Yet if gays, through their carefully practiced "gay" mannerisms, know fully well they are antagonizing many heterosexuals, then why do they display them? Is it not in part to make heterosexuals sweat?[38] By aggressively politicizing these traits, and demanding that those objecting must grin and bear it, they are in a sense restricting heterosexual freedom of speech. Male and even female opposition to persons with these traits is slowly taking a nasty turn, moving from violence of language to violence of fists. And yet, given the emerging legal climate, one discovers within oneself a disquieting empathy with the inchoate rage behind such acts.

Most heterosexuals are reasonably libertarian; an October 1989 Gallup Poll indicated that by a 47-to-36 margin (with the remainder undecided), Americans prefer legalization of homosexual relations between consenting adults.[39] This is all to the good. Anti-sodomy laws serve no purpose but to intimidate people out of private, consensual acts. On the other hand, the brazen, *open* display of homosexuality—as if to taunt, to tease, to maliciously sow confusion into sexual identities—is something most heterosexuals do not handle gracefully. With an unofficial government mandate for preferential treatment, it is not difficult to imagine a backlash. When homosexual lawyer-artist William Dobbs plastered explicit homosexual artwork throughout the Yale University campus back in 1989, he was not simply making a homoerotic statement; he was daring "homophobes" to remove the art, and risk suspension or expulsion from the university.[40] Those having little to lose may accept his dare—and it may be people like Dobbs as well as such art that gets torn up.

Should a sober discussion of the possibilities for heterosexual violence be forbidden? Nobody in a *rational* state of mind would seek to emulate the exploits of "skinheads" or the late San Francisco Supervisor Dan White. Yet let readers here imagine themselves in that Madison restaurant or Seattle airport, being witness to mass displays of homosexual kissing, and feeling utterly helpless to evince the slightest disapproval. Would not such a scenario provoke an impulse, however fleeting and irrational, to do bodily harm? Does not the knowledge that the law is now stacked against even nonviolent disapproval ("hate crimes") merely add to the likelihood of a conflagration?

The principal motive of the gay movement is coming into focus with each passing month: to bait heterosexuals' less morally sturdy side, goading them into verbal or (better) physical assaults against the openly homosexual. That way, cries of homosexual victimhood would carry even more self-fulfilling prophecy, so much the better to vilify heterosexuals.

Gay militants aren't hesitant about admitting to such motives. Some want nothing less than war in the streets. Homosexual playwright and ACT-UP founder, Larry Kramer, recently called upon a gay audience to take gun practice for use in eventual combat against police and gay-bashers. "They hate us anyway," he rationalized. A cover of a recent issue of *Outweek* displayed a lesbian pointing a gun at the reader, with the headline, "Taking Aim at Bashers," while another cover announced, "We Hate Straights."[41] Even "mainstream" gay leaders, such as Urvashi Vaid, executive director of the National Gay and Lesbian Task Force, endorse such tactics, whatever the loss of potential supporters.[42]

The crowning legacy of the new gay legalism may yet be widespread violence, a violence brought on by state inhibition of rational dialogue at the behest of gay radicals, and in the name of "sensitivity." That alone is enough reason to oppose it. □

1. "Gay Rights Protesters Win Right to Kiss," *The Washington Times*, April 18, 1990.
2. Joyce Price, "Queer Nation Decides It's Time to Bash Back," *The Washington Times*, October 15, 1990.
3. Price, "Queer Nation."
4. One of the best arguments that homosexuality is not simply a statistical aberration, but a behavioral abnormality, can be found in Steven Goldberg, "Is Homosexuality Normal?" *Policy Review*, Summer 1982, pp. 119-38.
5. "The Future of Gay America," *Newsweek*, March 12, 1990, pp. 21-22.
6. "Gay Measure Stirs Florida," *The Washington Times*, August 24, 1990.
7. Tupper Hall, "Gay Couples Allowed to File as 'Non-Profit' Associations," *The Washington Times*, December 17, 1990.
8. Jeff Levi, speech to National Press Club, October 10, 1987.
9. The term "hate crime," in the hands of the homosexual lobby, is so vague that even an accidental epithet could qualify as an offense. For example, of the 462 anti-homosexual "hate crimes" committed in Virginia in 1987, 423—over 90

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percent—involved mere name-calling. See Patrick Buchanan, "The Real Victims of Hate Crimes," *The Washington Times*, March 7, 1990. The National Gay and Lesbian Task Force (NGLTF), in its own estimate of hate crimes committed nationwide in 1988, admitted that 77 percent were verbal. In fact, the origin of the legislation lay in a 1985 NGLTF presentation before the National Institute of Justice. See Congressman William Dannemeyer, *Shadow in the Land: Homosexuality in America* (San Francisco: Ignatius Press, 1989), pp. 71-75. Congressman Dannemeyer's book is the best currently available on the homosexual lobby.

10. Advertisement in *New York Native*, April 18, 1988.

11. See Dannemeyer, *Shadow in the Land*.

12. Quoted in *Newsweek*, "The Future of Gay America," p. 21.

13. Phyllis Schlafly, "A Choice, Not an Echo in California," *The Washington Times*, March 2, 1990.

14. Doug Bandow, "Government as God," in *The Politics of Plunder: Misgovernment in Washington* (New Brunswick, NJ: Transaction, 1990), pp. 18-20.

15. Even sympathetic observers of this process admit that the public identification of a neighborhood as "gay" induces non-gays to move out. See Manuel Castells and Karen Murphy, "Cultural Identity and Urban Structure: The Spatial Organization of San Francisco's Gay Community," in Norman I. and Susan S. Fainstein, eds., *Urban Policy Under Capitalism* (Beverly Hills, CA: Sage Publications, 1982), pp. 237-59. For a decidedly unsympathetic (and highly personal) account of how the process works in resort communities, see Midge Decter, "The Boys on the Beach," *Commentary*, September 1980, pp. 35-48.

16. James N. Baker and Shawn D. Lewis, "Lesbians: Portrait of a Community," *Newsweek*, March 12, 1990, p. 24.

17. For evidence of this, see Dannemeyer, *Shadow in the Land*, p. 70.

18. For example, gay activists have now convinced the courts that having AIDS qualifies as a condition covered by Federal handicap discrimination laws. *Shuttleworth* v. *Broward County*, 41 FEP Cases 406 (S.D. Fla. 1986); *Thomas* v. *Atascadero Unified School District*, 662 F. Supp. 376 (C.D. Cal. 1987).

19. Valerie Richardson, "Gay Voters Claim Biggest Victory in San Francisco," *The Washington Times*, November 9, 1990.

20. At Harvard University, for example, the administration quickly suspended a student who removed a sign from an empty table in a dining hall indicating that it was reserved for a campus homosexual organization. Leave aside the absurd notion that a lunch table ought to be reserved for any particular sexual group, and the absence of malice on the part of the student (who simply sought a vacant seat in an otherwise crowded room). This student's suspension could only have come about either because the administrators meting out the punishment were radical homosexuals, or because they were heterosexual but feared crossing swords with campus homosexuals.

In a sad coda to this incident, the suspended student later committed suicide. See Thomas Sowell, "Call of the Woolly Pulpit," *The Washington Times*, December 7, 1990.

21. *Braschi* v. *Stahl Associates Co.*, 74 N.Y.2d 201.

22. Dennis Hevesi, "Court Extends 'Family' Rule to Rent-Stabilized Units," *The New York Times*, December 6, 1990.

23. Richardson, "Gay Voters Claim Biggest Victory."

24. Thomas Sowell, "Affirmative Action: A Worldwide Disaster," *Commentary*, December 1989, pp. 21-41; see also Sowell, *Preferential Policies: An International Perspective* (New York: William Morrow, 1990).

25. Stephen Johnson, "Reverse Discrimination and Aggressive Behavior," *Journal of Psychology*, January 1980, pp. 11-19; Johnson, "Consequences of Reverse Discrimination," *Psychological Reports*, December 1980, pp. 1035-1038.

26. Paul Greenberg, "Decline and Fall of Civil Rights," *The Washington Times*, November 8, 1990.

27. Gara LaMarche and William B. Rubenstein, "The Love That Dare Not Speak," *The Nation*, November 5, 1990, p. 524.

28. Pete Hamill, "Confessions of a Heterosexual," *Esquire*, August 1990, pp. 55-57.

29. "Gay Protesters Confront Arsenio Hall," *The Washington Times*, December 17, 1990.

30. Quoted in Andrew Sullivan, "Gay Life, Gay Death," *The New Republic*, December 27, 1990, p. 24. That Sullivan, an ally of the homosexual legal revolution, is alarmed over the totalitarianism inherent in such pronouncements should be taken seriously; he supports—on conservative grounds, no less—legalizing homosexual marriage. See Sullivan, "Here Comes the Groom," *The New Republic*, August 28, 1989, pp. 20-22.

31. David Rieff, "The Case Against Sensitivity," *Esquire*, November 1990, p. 124.

32. Here was Rooney's "anti-gay" remark: "Many of the ills which kill us are self-induced." They include, "too much alcohol, too much food, drugs, homosexual unions, and cigarettes." Given that at the time of that statement, over 50,000 persons already had died of AIDS, Rooney would hardly qualify as anything other than a bearer of unpleasant truth.

33. For good interpretations of this episode, see Eric Breindel, "The Andy Rooney Affair," *Commentary*, May 1990, pp. 56-57; Cal Thomas, "Silence from the Pluralism Corner," *The Washington Times*, March 12, 1990.

34. The evidence suggests that increased social tolerance of homosexuality does not necessarily lead to homosexuals themselves being happier. See Martin S. Weinberg and Colin J. Williams, *Male Homosexuals* (New York: Oxford University Press, 1974); Samuel McCracken, "Are Homosexuals Gay?" *Commentary*, January 1979, pp. 19-29.

35. Thomas Short, "Gay Rights or Closet Virtues?" *National Review*, September 17, 1990, pp. 43-44.

36. Marshall Kirk and Hunter Madsen, *After the Ball: How America Will Conquer Its Fear and Hatred of Gays in the 90s* (Garden City, NY: Doubleday, 1989).

37. Jonathan Alter, "Degrees of Discomfort," *Newsweek*, March 12, 1990, p. 27.

38. This is the position taken in McCracken, "Are Homosexuals Gay?" pp. 27-28.

39. The Gallup Report, Report No. 289 (Princeton, NJ: The Gallup Poll, October 1989), p. 13.

40. "The Future of Gay America," pp. 22-23.

41. See Sullivan, "Gay Life, Gay Death," p. 25.

42. "The Future of Gay America," p. 23.

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Should Government Subsidize Higher Education?

by James L. Payne

When it comes to agricultural subsidies, scholars line up to criticize. They point out that these government funds cause overproduction and waste, that they stifle innovation, and that they are unfair, since lower-income taxpayers are forced to contribute to wealthier individuals. But on the subject of subsidies to academia, scholars are noticeably silent. They are content with government-operated state universities, and seldom say a word against the many Federal programs that directly or indirectly fund colleges, including student loans, construction grants, work-study programs, and research grants.

This silence is unfortunate, since many of the current problems in American higher education trace to its subsidized character. Those who seek to revitalize academic life can't afford to ignore this issue. It turns out that the arguments against agricultural subsidies apply in equal or greater force to higher education!

Overproduction and waste in higher education take several forms. Because higher education is priced well below cost, many more individuals fill university places than can profit from the training. One result is an oversupply of trained personnel in many fields: Ph.D.'s in English who work as clerk-typists or B.A. graduates in forestry who drive lumber trucks. The waste is also intellectual: many students who sit in the underpriced college classrooms lack the capability and motivation to absorb the material. They are frustrated and unfulfilled, and their resistance drags down the quality of education for the others.

Another form of waste is the pursuit of irrelevance. Insulated from the discipline of the marketplace in their taxpayer-supported fiefdoms, many academics pursue silly scholastic dogmas. For example, Marxism thrives among university teachers. Professors of literature embrace inane fads in interpretation that lead them to wrest the life from the books they teach.

A broader consequence of subsidizing higher education is that of preserving an historical anachronism. The four-year liberal arts college emerged several hundred years ago as an educational form to serve a tiny, New England elite. Had this institution not been nurtured by government, the landscape of higher education would almost certainly have evolved differently.

In a system of voluntary, unsubsidized higher education, the four-year college probably would have been replaced by a myriad of schools and programs, all competing to provide the kind of education that Americans wanted and could benefit from. To a large extent, this education would be oriented toward specific technical skills. At the same time, however, the liberal arts could thrive. Instead of being imprisoned in government-subsidized academic "disciplines," subjects such as literature, history, politics, and philosophy could be opened to both teachers and students whose moti-

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vation would more often be curiosity and concern. With government out of the picture, who knows what kinds of exciting variations and innovations would flourish!

Regulations and Red Tape

In agriculture, another cost of subsidies has been to subject farmers to governmental regulations and red tape. The subsidies in higher education have entailed the same burden. Take, for example, affirmative action, the Federal requirement—let's not mince words—that colleges must hire less qualified members of governmentally approved social groups, including women, blacks, and Hispanics. The direct result of this Federal regulation, of course, is less competent faculty members. Its indirect effect on the caliber of administrators may be even more harmful. To be a college dean or president these days, you pretty much have to go along with the premise of affirmative action, which is that social goals can be more important than academic standards. Since uncompromising champions of intellectual excellence cannot accept this premise, these stalwarts tend to be excluded from a leadership role in higher education today.

A final argument against government subsidies for higher education concerns their effect on the thinking of academics. When government pays the salaries, and supports the students, and builds the science labs, and funds the summer research trips to Paris, scholars are encouraged not to bite the hand that feeds them. For one thing, administrative controls are at work. The scholar who makes a forthright criticism of a spending program that is at all close to his field will often be reprimanded by his superiors. Thus, physicists are deterred from questioning super-colliders, educational psychologists are deterred from criticizing public education, and so on.

There is an even more insidious control, however. The really telling objections to government spending programs involve universal principles that underlie all programs. The state-subsidized scholar is reluctant to unearth these ideas, for they bring into question his livelihood and that of his colleagues. For example, one criticism of government subsidies is that they involve the use of physical force, since force and the threat of force are the basis of the tax system. A profound analysis of subsidies, then, would have to ask whether the use of force is a moral approach to social problem-solving. A scholar who already has a government paycheck in his hand would rather not face this issue—and is, of course, biased if he does address it.

Thus we see that government subsidies of higher education may involve far worse evils than similar payments to farmers. In agriculture, a subsidy merely distorts production. In higher education, it distorts the thinking of the entire intellectual class on one of the critical issues of our era, the proper role of government in the life of a people. □

Subsidy Leads to Control

IDEAS ON LIBERTY

It is hardly lack of due process for the government to regulate that which it subsidizes.

—UNITED STATES SUPREME COURT
Wickard v. *Filburn,* 317 U.S. 111, p. 131,
October 1942

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The Centre Square Water Works: A Monument to Government Inefficiency

by James A. Maccaro

The Centre Square Water Works was an ornate structure in the heart of Philadelphia and for many years was one of the city's best known landmarks. Designed in 1798 by Benjamin Latrobe, it resembled an ancient Greek temple, complete with Doric columns and pediments. Although now remembered mainly as an architectural oddity, the Water Works is also a landmark in the history of state involvement in the American economy, and provides a cautionary tale of government waste and inefficiency.

The Philadelphia water system was the first large-scale public works project in our nation's history. As Philadelphia's population grew, demand overburdened its network of public water wells, which once were the pride of the city. In 1797, a group of prominent citizens petitioned the City Council to rectify the situation, and in the following year Latrobe, the nation's leading architect, submitted his plan.[1] It called for water to be pumped, using the newly invented steam engine, from the Schuylkill River to Centre Square, where a steam-powered pump located in the Grecian temple would make it available to the rest of the city.

The Latrobe plan was opposed by Oliver Evans, a pioneer industrial designer. Evans was the inventor of the first practical high-pressure steam engine, and the author of *The Young Mill-Wright and Miller's Guide*, a best-seller that was indispensable to the mechanics of the early 19th century. He also is credited with being the originator of the modern assembly line.[2] Evans noted several glaring deficiencies in Latrobe's system, and put forth his own plan. He correctly asserted that the Water Works' capacity as designed by Latrobe was merely 7,500 gallons, a figure grossly inadequate for the city's needs. Additionally, he argued that the system could not be built at Latrobe's estimate of $150,000.

While Evans was a better mechanical designer, Latrobe was a far superior lobbyist. The City Council was composed of members of the leading families of the city; they were wealthy and cultured, and patterned themselves after the English aristocracy. Latrobe, a sophisticated and well-educated English gentleman, was skilled in the art of flattering and cajoling the Council into adopting his viewpoint. In contrast, Evans, despite his mastery of the technology of the day and his many accomplishments, was nonetheless, in the words of historian David Freeman Hawke, a "dirty fingernail" man. He, in common with most of the great mechanical designers of the period, was a product of the working class, and knew next to nothing about how to charm socially prominent government officials.

Latrobe realized that the key to winning over his audience was a sophisticated presentation. He published and presented to the councilmen a polished and extensively illustrated booklet that featured some of the highest quality engravings made in America up to that time. While Evans con-

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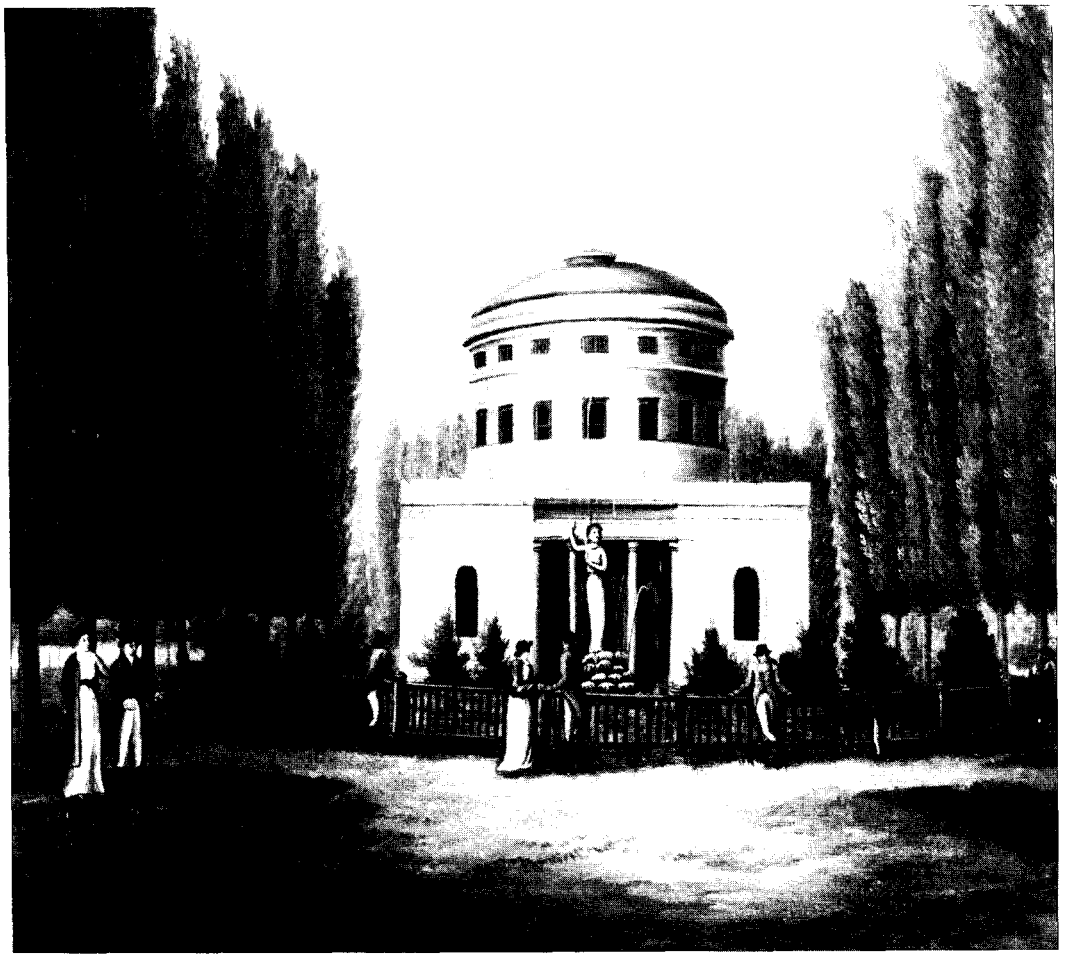

The Centre Square Water Works (from a painting in the collection of The Historical Society of Pennsylvania).

cerned himself solely with the technical issues involved, Latrobe stressed the aesthetic appeal of his plan. He impressed upon the councilmen that they were authorizing not a mere utility, but rather a grand monument that would reflect for generations to come the greatness of the city and themselves.

The Council enthusiastically endorsed Latrobe's plan, and construction of the Centre Square Water Works began in May of 1799. Latrobe, however, grossly exceeded his budget and far surpassed his promised construction time. Instead of costing $150,000 and taking about half a year to complete, as Latrobe had led the Council to believe, the actual cost of construction was $500,000 and the time to completion was 18 months. Further, Evans' objections were proved to be fully justified: the Water Works was incapable of meeting the city's demand and operated at a continual deficit. It was finally abandoned in the early 1800s, to be replaced by a system that adopted many of Evans' ideas.

The Philadelphia government of 1797 recognized the need for a modern water system, but was ill-equipped to evaluate and implement a practical solution. The Water Works fiasco set the trend for future public works projects. Then as now, the procurement process was politicized, costs and time overruns far exceeded expectations, and the end result was a dubious scheme that did little more than waste taxpayers' money. □

1. Benjamin Latrobe (1764-1820) designed the Bank of Pennsylvania building in Philadelphia and supervised the rebuilding of the Capitol after the War of 1812. He died of yellow fever while supervising construction of the New Orleans water system.

2. The career of Oliver Evans (1755-1819) is described by David Freeman Hawke in *Nuts and Bolts of the Past: A History of American Technology, 1776-1860* (New York: Harper & Row, 1988).

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The Only Failure We Have to Fear Is the Fear of Failure

by Dwight R. Lee and Richard B. McKenzie

Socialism has been, by any measure of economic success, a total failure. The hope of socialism was that it would promote wealth and distribute it fairly by transferring power away from capitalists interested only in profits and give more control to political representatives concerned with economic growth and social justice. That hope has been dashed. Socialism has succeeded only in providing special privileges to a few by imposing grinding poverty on everyone else.

With socialism a sinking ship, the goal in country after country that has been impoverished by the legacy of Karl Marx is to achieve the wealth-creating power of capitalism. The most dramatic examples of the rejection of socialism and the move to embrace capitalism have come from Eastern Europe and the Soviet Union, countries that have experienced the poverty of socialism firsthand. But countries in Africa, South America, and other parts of the world that have been beguiled by the false promises of socialism also are anxious to trade socialism for capitalism.

While the embrace of the market economy has been widespread, it has been cautious. Everyone wants the wealth created by capitalism, but at the same time the marketplace is seen as harsh, calloused, and unfair. Isn't the marketplace littered with the victims of those who have suffered the failures of bankruptcy, unemployment, and poverty at the merciless hands of market competition? Isn't there some way to accept the wealth that capitalism offers without having to endure the constant failures it imposes? The calls have been for a market economy with a human face, or for a third way between the productivity of capitalism and the compassion of socialism. There is no end of proposals to reform the marketplace in order to protect its innocent victims.

It would, of course, be nice to unbundle the economic package known as capitalism or the free market, and keep the sweet while rejecting the bitter. It also would be nice if everyone had an above-average I.Q. and income. Unfortunately, the only way to avoid the failures that result from capitalism is to pass up the wealth created by capitalism.

Failures in the marketplace serve an indispensable function in the production of wealth: they provide information on the most productive use of resources and the motivation to respond appropriately to that information. Failures are part of the steering mechanism that directs an economy toward prosperity. Attempting to improve the marketplace by preventing economic failure is equivalent to attempting to improve an automobile by removing the steering wheel. It is no surprise that socialistic economies that were applauded initially for eliminating unemployment, bankruptcies, and economic failure of every variety have themselves been colossal economic failures. By allowing economic failures in the small, and converting these failures into useful information, market economies have produced economic

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success in the large. In economics, overall success depends on a constant supply of small failures.

Thus, the general economic failure that is most feared in all societies stems, paradoxically, from the fear of economic failure. The best antidote for this fear is an understanding that economic failure is a necessary ingredient in the market process that leads to higher overall living standards.

Understanding Failure

While economic failure is a positive force in the market economy, it is commonly converted into a destructive force in the political process.

Every economy is a political economy and, for the very reason that economic failure promotes wealth in the marketplace, it promotes political responses that can undermine market productivity. A public understanding of the importance of economic failure is the best way to moderate harmful political responses to that failure. The lack of understanding of the essential role of economic failure is the biggest political obstacle to achieving free market prosperity in formerly socialist countries. The same lack of understanding prevents the market process from yielding the full measure of its potential wealth in those political economies that are predominantly capitalistic.

It is easy to see the failures imposed by market forces as isolated occurrences rather than as an integral part of a wealth-creating process. When viewed in isolation, it is natural to see economic failure as unnecessarily harsh and unfair, and conclude that government can protect people against these failures without harming economic productivity. But government cannot protect everyone against failure. The best government can do is to protect a privileged few against failure by diminishing the opportunity for success of everyone else. Obviously such special interest protection is neither efficient nor fair.

Ironically, for the very reasons that the market economy is both more efficient and fair than alternative economic systems, it appears to be unfair to the superficial observer. Conversely, for the very reasons that the political process is typically less efficient and fair than the market process, it appears to be fair to the superficial observer. Unfortunately, harmful political policies are often fueled by superficial impressions.

The efficiency of the market process derives from the fact that it holds people accountable for the costs of their actions. This accountability is imposed in ways that are difficult to ignore, such as bankruptcy, unemployment, and other forms of economic failure. Although this market accountability conveys long-run benefits to all by promoting productivity, each economic interest group prefers special protections against the accountability of the market while benefiting from the accountability the market is imposing on others. The fundamental fairness of the marketplace is that it does not allow such free-riding on the contributions of others. In the marketplace we all have to contribute to the general well-being by accepting the failure as well as the success that comes our way.

However, because the benefits from market accountability are general, they are easily ignored and taken for granted. Because the costs and failures of market accountability are concentrated, they easily dominate the public's perception of the market and create the impression of unfairness. Indeed, the failures inflicted by the market appear all the more unfair against the backdrop of economic success made possible by those failures.

The inefficiency of the political process results from the fact that it provides opportunities for people to acquire benefits without being held accountable for the costs. Political action commonly concentrates benefits on a well-organized few while spreading the costs thinly over the general public. As opposed to the fairness of the market process, the political process encourages some to free-ride on the contributions of others. Because political benefits are concentrated, however, they are easily noticed, greatly appreciated, and readily associated with particular policies and politicians. Because the costs are diluted over so many, they are easily ignored. The impression conveyed is that the political process motivates generosity and mitigates the unfairness of the marketplace. The larger the number receiving political benefits, and the more poorly the market operates because of the greater burden of government, the more it is that fairness seems to demand extending political benefits to yet additional recipients.

The impression that failure in the marketplace is unfair, and government action to moderate that failure is fair, is accentuated by special interest politics. No matter how well a group is organized politically, it isn't likely to be successful in obtaining special interest subsidies, protections, and

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other exemptions from the discipline of market competition by arguing that its members want to benefit at the expense of the general public. A far more effective technique is for a special interest to claim that they, and the public interest, are being threatened with bankruptcy, job losses, and dislocations by unfair market forces. Whether it is farmers facing foreclosure, steelworkers facing indefinite layoffs, or the Chrysler Corporation facing bankruptcy, their chances of appealing to public compassion and obtaining political protections against market pressures are increased with a persuasive argument that those pressures are unfair.

Of course, with public compassion being fanned by interest groups using economic failure as a pretense for capturing special privileges, the result is unlikely to be very compassionate. Certainly there are people who for reasons beyond their control are left behind in the marketplace, and who deserve our sympathy and help. Unfortunately those who need help the most are the ones whom political action in the name of compassion helps the least. Pointing to the problem of poverty has long been the most effective way of disparaging the market economy and persuading the public that in the absence of government programs the marketplace would be littered with the poor and the impoverished. What has been almost completely ignored is the government's impotence in helping the poor. Indeed there is reason to believe that by lowering the productivity of the marketplace, government transfer programs have reduced the income of the poor. By concentrating attention on economic failure in the marketplace to justify the expansion of political control over economic decisions, the influence of special interest groups has grown and the scope of economic failure has been enlarged.

Unless economic failures are understood as integral to the successful performance of market economies, they will be seized upon by political interests as justification for expanding government action that stifles general economic productivity for the short-run advantage of the politically influential few. As long as the economic failures that impose the guiding discipline in market economies are widely perceived as unnecessary and unfair, a threat remains to the prosperity of existing capitalistic economies, and a roadblock stands in the path of economic progress in those economies that are trying to escape the blight of socialism. □

IDEAS ON LIBERTY

The Only Route to Personal Security

If the less productive members of a society truly seek security, let them rally to the defense of the freedom of choice and freedom of action of those who work for a living and who are personally productive. Let them voluntarily deal with one another in a marketplace kept free of compulsion. Such voluntary trading directs the instruments of production and the means of economic security into the hands of those most capable of serving all mankind. It promotes mutual respect for life and property. It stimulates every individual to develop his own talents to their maximum productivity. It encourages saving instead of squandering. The free market, and not its displacement by governmental controls, is the only route to the kind of personal security which makes for harmonious social relationships.

—PAUL L. POIROT

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The Locker Room Is Private Property

by Donald G. Smith

In the past few months we have all read a lot of words on the subject of female reporters in men's locker rooms. I am familiar with the contention of the reporters that they have a job to do and should have the same rights as men. I have also heard the complaints from players' wives that they don't like their husbands to disrobe in the presence of other females. There have been statements that a locker room is a man's world and should remain so. Others claim that a reporter is a reporter and that gender shouldn't matter.

There have also been suggestions to alleviate the problem: put a screen across the middle of the room; keep everybody out for 20 minutes; build a special interviewing room; or do all of the interviewing outside.

It seems to me that we have been wasting a lot of time and newspaper space on concerns that aren't very important. We have—intentionally, perhaps—avoided the one overriding issue that should settle things for all time. I refer to the right of a business owner to admit anyone to the premises that he or she chooses. This is another way of saying *property rights*.

Remember that we live and work in a capitalistic, free enterprise system. Professional sports teams are certainly a part of this system. Even when a sports team uses a rented facility, the business part of the arrangement is still private—just as private as any other business that operates in a rented building.

The courts have already established that an owner has the right to move a franchise to another city. Certainly no one disputes the owner's right to control parking and concessions; to release a player who isn't doing the job; to trade the contract of one player for another; to keep fans off the playing field; even to change the team colors. Why then doesn't the owner have the considerably lesser right to determine who will, and who will not, be allowed on the premises?

We are talking here about individuals and individual rights. It is my contention that the owner has the right to ban women, or anyone else, from the locker room for no other reason than simple ownership. This is the same right that a female reporter would invoke to keep any uninvited person out of her home, including a team owner. The team owner doesn't owe an explanation to those who are kept out and most certainly not to any group of political reformers or protest marchers. It is quite clearly none of their business. The same owner has the right to admit only female reporters and to keep the men out, or to allow only reporters over 40, or those with last names beginning A through L. This is the owner's prerogative, and it is not the business of government to determine who is to be allowed in a private facility.

In regard to the contention that reporters "have a job to do," I submit that this situation is not exclusive to the newspaper business. Indeed it applies to every employed person, and we cannot expect doors to open just because somebody has to earn a paycheck. I have been free-lance writing for 25 years, and I have yet to see a publisher accept something that he doesn't want because "Don Smith has a job to do." Nor have I seen affirmative action groups breathing fire because one of my articles wasn't accepted. This isn't the way that the system works, and let's hope that it never comes to this.

Rejection is a part of my business just as other obstacles are an inherent part of any job. Female reporters would do well to remember this the next time they are told that they aren't allowed in a room where men are showering and changing their clothes. □

Mr. Smith is a writer living in Santa Maria, California. He has been a frequent contributor to The Wall Street Journal.

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Affirmative Disintegration: India's Most Dangerous Decade

by Shyam J. Kamath

For the past decade, India has been on the verge of political and social collapse. In recent months, caste riots over a decision to enlarge India's affirmative-action "reservation" policies have claimed hundreds of lives, including an estimated 150 suicides, mainly by distraught youth, many by public self-immolation and ingestion of poison. In just one week, 325 people lost their lives in communal riots sparked by a politically motivated religious dispute between the country's majority Hindus and the minority Moslems.

In the beautiful vale of Kashmir, the idyll has again been shattered by gun battles between Kashmiri Moslem secessionists and Indian security forces with nearly 2,000 people killed. Life in the adjoining state of Punjab remains paralyzed, and the death toll mounts as Sikh secessionists continue their reign of terror. Continuing agitations in the northeastern states, especially Assam, fester and take a heavy toll on human life. Communal frenzy has touched virtually every state while caste divisions seem drawn more sharply than ever before.

In the latest act of a long political tragedy, another Indian government has fallen as a result of the communal and caste frenzy unleashed by its vote-mongering policies. The coalition government that has replaced it is not expected to last long. The situation, uncannily, seems to bear out the gloomy prognostications of Selig Harrison's influential 1960 book, *India: The Most Dangerous Decades*, on the disintegrative forces of caste, region, religion, and language on India's ability to remain united. It seems that India's "most dangerous decade" has arrived.

While the causes of the tragic events unfolding in India are complex and varied, there is a common denominator that is insufficiently appreciated. Since India won its independence in 1947, social and economic policy has been dominated by statism. An all-pervasive network of controls on the private sector combined with a framework of centralized planning and an emphasis on public sector activity have stunted economic growth in a land of tremendous human and natural-resource potential. Confiscatory tax rates along with ever-escalating controls have led to the growth of one of the largest and most thriving underground economies in the world, estimated to account for 50 percent of economic activity. Prohibitive tariffs and a policy of inward-looking "self-reliance" have insulated the economy from foreign competition and investment.

Besides preferential policies many times more comprehensive and detailed than similar U.S. affirmative action programs, social policies have included statist labor-market and employment policies, government control over the broadcast media, and socialistic educational and housing programs. These have gone hand-in-hand with the unrestrained growth of a bureaucratic, redistributive state.

Over 20 million Indians are on the public payroll, and around 70 percent of all organized sector employment is in the public sector. The government's wage bill accounts for two-thirds of its annual revenues. During the past 40 years, the public sector has accounted for about 60 percent of total investment. India's jungle of red tape is

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said to be one of the largest and most complex in the world.

The result of such a statist development policy has been the neglect and systematic suppression of market activity. Private property rights and voluntary transactions have been severely circumscribed. Anemic rates of economic growth have been the direct result of the suppression of market forces amidst increasing population pressure, rising expectations, and burgeoning powerful special interest groups. These interest groups have competed to commandeer the redistributive powers of the state in their favor, despite sporadic recent attempts at economic liberalization. The tragic events of recent months have been the predictable result.

The caste violence and deaths unleashed by then-Prime Minister V. P. Singh's decision to implement the findings of the 1981 Mandal Commission Report for extending the ambit of India's preferential policies is a case in point. India's 1950 Constitution enshrined the concept of restitution for the "untouchable" castes by allowing the state to "make special provisions for the advancement of any socially and educationally backward classes" and to make "any provision for the reservation of appointments or posts" in favor of such backward classes in the services under the state.

Some 1,765 different groups in India's complex and locally variegated caste system, comprising about 17.5 percent (increased to 22.5 percent in 1970) of the population, were classified as "Scheduled Castes" and "Scheduled Tribes." Quotas in central government employment, legislative representation, education, and numerous other areas were provided by statute. Individual states set up their own "reservation" policies with much higher quotas, in some cases up to 80 percent of government positions. All this was done despite the inability of government committees to come up with clearly defined criteria for identifying the targeted groups.

Subsequent events have borne out the unintended consequences of the decision to put social justice in the political commons. While quotas at the state level proliferated, political pressure for similar policies for the "Other Backward Classes" (OBCs) led to the Mandal recommendations. By its own admission, the commission was unable to define clearly the criteria for identifying OBCs.

When Prime Minister Singh saw his fragile 10-month-old coalition government on the verge of collapse, he decided to create a "vote bank" by implementing the Mandal recommendations. By doing so, he hoped to command the backing of about 60 percent of the electorate, the total number of "reserved" seats now comprising 22.5 percent for the Scheduled Castes and Tribes, 27.5 percent for the OBCs, with another 5 to 10 percent for the poor. The resulting "anti-reservation" riots have been the outcome of this policy of making politics dominant and the market subservient.

The communal frenzy that has engulfed the nation in recent months is also linked to the dominance of politics over economics. While the 1950 Constitution declared a secular state, political parties have used religious affiliation as a powerful force to gain and hold power. The lack of sustained economic growth and employment opportunities, accompanied by a rapid increase in the numbers of educated but unemployed young people, has contributed to the rise of religious fundamentalism.

The most recent strife has been caused by one of Mr. Singh's coalition partners, the militant Hindu Bharatiya Janata Party (BJP), which has spearheaded a drive to build a Hindu temple at the site of a 450-year-old Moslem mosque in Ayodhya, the legendary birthplace of Lord Rama, the Hindu deity. Events were precipitated by Singh's decision to implement the Mandal recommendations, which the BJP saw as a serious threat to its very existence and its strategy of building a united electorate of Hindus, who comprise about 83 percent of the population. It saw the Other Backward Classes reservation decision as dividing the Hindu vote. In turn, Moslem leaders have raised the specter of Hindu dominance in the face of severe job competition in a stagnant job market and an unsympathetic bureaucracy. The BJP-led march to and temporary occupation of the mosque at Ayodhya prompted a nationwide outbreak of communal frenzy and the collapse of Singh's coalition government.

The same denominator underlies the events in Kashmir, Punjab, and the northeastern states. The redistributive and statist policies of previous governments led to an on-and-off policy of distributing state largesse alternating with the undermining of democratically elected governments in these states. The violent demands for secession provide a paradigmatic example of an effort by regional elites to wrest the coercive power of the

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state in order to gain political and economic payoffs.

Thus, since gaining independence in 1947, India has been epitomized by the replacement of individual pie-enlarging behavior with interest-group oriented pie-slicing behavior. Recent attempts at liberalization have only led to an escalation of fragmentation and violence, since no fundamental changes have been made to restore a market order.

Such fundamental changes would involve an across-the-board scrapping of all controls over the domestic economy and foreign trade and investment, the dismantling of the nihilistic planning system, a drastic reduction in the bureaucracy, a restoration of absolute rights to private property and voluntary exchange, and a comprehensive reliance on market forces in every facet of daily life. A constitutional convention to limit the powers of government and guarantee a decentralized, truly federal system of government is also urgently needed. The objective should be to make economics dominant and politics subservient.

Given the political economy of the redistributionist society and the entrenched interest groups and violence, such an outcome is unlikely. But the alternative is the continued unfolding of India's most dangerous decade. □

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"Acting Black" Crushes Personal Spirit

by Jason D. Hill

For years I have been disturbed by the psychological batterings and lynchings blacks inflict on each other. All this is performed in the name of some undefined code of "appropriate" behavior: acting black.

There is a strong tendency among many blacks to malign and ostracize other blacks who in their view do not fit within the concept of how a black person should behave. When I was attending a university in Atlanta, a woman in one of my classes accosted me one day. For one thing, she said, I spoke "too proper"; black folks didn't talk that way. She added emphatically that white people just would not appreciate my being so intellectual in class. I needed to shut up sometimes, she insisted, because white people owned the school.

I looked closely at her to remind myself that this was no dream—that this was the United States of America in the 1990s.

She said she also thought it disgusting that I was studying so much with a white girl. Why couldn't I share my brains with other blacks? She reminded me that the "sisters" would think I was trying to prove I was too good for them.

On another day, another black student asked me what my major was. When I declared it was philosophy, raised eyebrows, a cynical smirk, and a self-righteous "whoever heard of a black philosopher?" were the responses I received. By the time the individual discovered that I enjoyed classical music, I was no longer perceived as a real person, let alone a black man.

Another fellow told me that "new blacks" needed to stop going over to Europe and visiting all those cathedrals and patronizing white values, that whites would laugh at us and ask us if we didn't know that there were African pyramids we should be visiting.

The situation is much worse on the job. Dining with fellow blacks I have been accused of "acting white" because I placed my napkin on my lap. Black people don't eat that way, I was informed.

A co-worker once told me that I spent too much time reading books and that I should be in the ghetto getting a real education; that because I was a middle-class black who hailed from the suburbs I had not lived the black experience, nor had I lived real life. I wondered if there were blacks who longed for a day when the "black experience" could be seen in terms other than victimization and inferiority.

But I knew such individuals existed because I had met several who admitted they sometimes felt guilty about their success. Some said they would rather bear this agony silently than be labeled an "Oreo," a disgraceful term used by many blacks to describe a person they feel is trying to be white. When our black academicians and politicians sanction and use such terms, one has to wonder what kind of moral and psychological atmosphere we want for our young people.

Mr. Hill is a senior at Georgia State University. *Reprinted with permission of* The Detroit News, *a Gannett newspaper, copyright, 1990.*

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This startling revelation was brought home during a conversation I had with an office manager some time ago. Observing him daily, I had the distinct feeling he was more intelligent than he appeared to be. Our conversations confirmed that my assumption was correct. He eventually confirmed that he consciously repressed a great deal of his intelligence.

Since all his employees were black, he said, he was afraid he would be perceived as being arrogant and pompous. It was hard to maintain that degree of professionalism he knew was necessary, he explained, because he had to make his co-workers realize his office position had not alienated him from them. Proof of such commonality took forms such as tolerance of sloppy, vulgar behavior or using curse words. The manager did not want to be labeled as a betrayer of the race, the man who forgot where he came from. Why would any human being apologize for the best within him?

Another fellow, an intelligent college student whom I knew very well, who is an advocate of Black Power, declared that blacks are racially superior to any other group. I pointed out that besides being irrational, such a view had been extolled by other races to dominate other groups throughout history. He said I was nothing more than a self-hating "house nigger" who was selling out.

What I saw in him was the black slave master regulating our activities, defining our emotional, political, and psychological existence to conform to his guilt-ridden, intellectually bankrupt vision. I want no part of this vision.

We scream racism when the Klan hurls racial epithets. When blacks do the same against other races and against their own, it suddenly becomes justifiable. How can one condemn racism while practicing it?

I spent a long time attempting to discern the nature of this mentality. I realized that in its most blatant and perhaps instinctual form it is tribalism. A tribalist mentality attempts to mold people's character and their values into the image of what constitutes tribal mores. Who are the definers of such values? Everyone and no one in particular. In such a culture, the individualist, the nonconformist, is resented.

It is truly unfortunate that those who dare to break from this hostage/captor mindset are forced to pay such a great price, often in the form of ostracism. Usually, however, the greatest price they pay stems from within. On the one hand the individual is torn between a sense of fulfilling his personal value system and of responding to new growth. But he is also torn by what he feels is his moral obligation to fulfill the implicitly understood code of "black values," even if assuming such a role means displacing and disowning his own personal feelings.

Slavery and years of government-sanctioned segregation forced the "black experience" to be one primarily of pain. But do we want to cling to the past forever? When the history of black people in this country is placed in the mainstream of academic consideration—not with any special consideration, but read simply as a part of world history—it would certainly be pleasing to read of the black experience as merging closer with the traditional American dream.

Until many blacks make a concerted attempt to see the members of other races and themselves as individuals, and start practicing healthy individualism, until they learn to see the universal qualities in education, art, literature, and ideas and stop this generalized talk about white values and white education, until they learn the importance of exploring values for mutual benefit, these psychological lynchings will continue unabated. □

A Matter of Choice

IDEAS ON LIBERTY

An individual has no choice about the color of his eyes, but he can choose to color his personality by a view of a gray, fogbound universe in which he feels hopelessly lost and powerless to comprehend; or he can color his personality by a view of a sunswept, integrated universe in which he feels at ease and confident in his ability to master.

—ANNE WORTHAM
"Individuality and Intellectual Independence"

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The Right Not to Live

by William B. Irvine

Last December a pair of legal decisions drew national attention. In one case a Michigan judge dismissed a first-degree murder charge against Dr. Jack Kevorkian, inventor of a "suicide machine." Janet Adkins, who suffered from Alzheimer's disease, had used this machine to self-administer drugs that caused her first to lose consciousness and then to die.

In the other case a Missouri judge ruled that the parents of Nancy Cruzan, who had been in an irreversible coma since a 1983 car accident, could remove her feeding tube and thereby bring about her death.

What these two cases involve, of course, is the so-called right to die. Many have questioned whether we possess such a right. Indeed, there are those who argue that in order to preserve our right to life, the state should intervene to prevent us from killing ourselves.

I would like to argue that those holding such views are fundamentally confused about what it means to say that we have a right to something. More precisely, they are guilty of ignoring the difference between rights and duties. Indeed, I would even argue not only that we have a right to die, but that this right is in a sense *included* in our right to life.

What does it mean, after all, to say that I have a right to something, e.g., that I have a right to that rusted-out Plymouth Valiant in my driveway? It means in part that I can use it and can restrict others' access to it (and that the state will back me up when I do so). It also means, however, that when I am done using it, I can give it away, sell it, dismantle it—indeed, that I can blow it up, as long as I do so in a way that does not expose others to risk.

If the state defends my ability to use the Valiant but obstructs my ability to dispose of it, the state to some extent transforms my *right* to own the car into a *duty* to own it. And in the case of my Valiant, it is a duty that, as the years go by and the steel crumbles into rust, will become ever more burdensome.

Turning our attention back to matters of life and death, if the state declares that our right to life cannot be relinquished—if, that is, it declares that we cannot decide when and how we end our lives—it has not only deprived us of an important element of self-determination, but it has to some extent transformed our right to life into a duty to live—or, in the case of brain-dead people, into a duty to go on breathing. And it has harmed us in doing so.

It is, by the way, important to keep in mind that those who argue that we have a right to die are not arguing that sick people should be put to death against their will (they are not, that is, arguing that we have a duty to die); rather, they are arguing that terminally ill patients who are sound of mind should be allowed to die, if they choose to do so.

Furthermore, many advocates of a right to die are arguing that this right involves not just the right to be starved to death, as was the case with Nancy Cruzan, but the right to die quickly and painlessly, as was the case with Janet Adkins.

We would be mistaken, then, to suppose that the right to life is somehow in conflict with the right to die. To the contrary, the right to die is an inherent part of the right to life. And anyone who truly values the lives of his fellow human beings will respect not only their decisions about how they live their lives, but also their decisions about how they die their deaths. □

Professor Irvine teaches philosophy at Wright State University in Dayton, Ohio.

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A REVIEWER'S
NOTEBOOK

The Conservative Constitution

by John Chamberlain

Russell Kirk calls his generally excellent new book *The Conservative Constitution* (Regnery Gateway, 241 pages, $22.95). The word "conservative" is correctly calculated. The famous 55 men, leaders in their own colonies, wanted to avoid a revolution. They were bent on retaining the historic rights of Englishmen. It was King George III who was the revolutionist, bound to revive the discredited divine right of kings.

So the 55 men—Madison, Hamilton, John Adams, Washington, and the rest—cut loose from Britain, though a bit reluctantly. They followed Montesquieu, who wrongly saw a tripartite division of powers in the unwritten English constitution. Kirk would like to think that Edmund Burke, a friend of the colonists who had no desire to see them separated from England, had more to do with the spirit of the American Constitution than John Locke, who gets a credit deriving from the part he played in the Glorious Revolution of 1688. It just so happened that Edmund Burke was too wrapped up in heading the English opposition to Robespierre and the revolutionary French Jacobins to pay any direct attention to 55 men in Philadelphia.

Just who read Burke and who read Locke are matters for argument. Russell Kirk does his best to get at the truth of influence. Charles Beard, the historian, was insistent that the 55 men had economic interests to protect. Kirk does not disagree. But he writes that factors other than economic interests strongly influenced the delegates, "and their votes at the Convention do not follow the pattern that Beard thought he had discerned; nor did ratification of the Constitution in the several states actually follow the lines of Beard's economic interpretation." The flaw in Beard's thesis is "the hard fact that mercantile, manufacturing and public-security investments were not the more important property holdings of the Convention's delegates." Agricultural property, particularly in the case of the richer delegates, bulked far larger in value. "There occurred no contest at the Convention between capitalist and farmer, nor any other discernible class conflict along economic lines."

The Beard thesis that the line of cleavage was between personal property interests (capitalistic classes) on the one hand and small farming and debtor interests on the other is, as Alabama's Forrest McDonald told Kirk, "entirely incompatible with the facts."

McDonald, a good Hamiltonian researcher, had undone Beard by following Beard's own methods, but with greater thoroughness. Kirk is perfectly safe in taking McDonald's word. But this leads to a great injustice. It so happens that a Michigan professor, Robert E. Brown, anticipated both McDonald and Kirk by some 30 years.

When I was doing the review column for *The Wall Street Journal* in the fifties, my editor, Vermont Royster, handed me Brown's pioneering critical analysis of Beard, a book called *Charles Beard and the Constitution*. You might find this interesting, said Royster.

Indeed I did. Let me quote from my own flabbergasted review column. "As things were actually constituted," I wrote, "the America of 1787 was an agrarian nation in which property was widely and beneficently diffused. As Professor Brown puts it, quoting Gouverneur Morris, 'At least 90 percent of the men were voters because they were freeholders.' Some 97 percent of the people lived in

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rural areas, and the local freehold voting qualification admitted the small farmers, including the debtors among them, to the franchise. States in which farming was practically the sole economic interest were among the first to ratify the Constitution. And towns whose citizens owned a lot of 'personality' actually voted to reject the document that had been allegedly rigged in their interest. . . .

"The Founders felt, and rightly felt, that they had a mandate from the people to balance the powers in such a way that the tyranny represented by King George III would never be repeated in America. And, while they admittedly had economic motives, their main effort was to protect the life, liberty and property (small farms included) of everybody, not merely the few who had put their money into movable securities which would benefit by the funding of the debt."

I concluded my review of the Brown book by saying that it failed to give justice to the totality of Charles Beard's work. Beard ended his life believing that the Founders had wrought well. He said many interpretations, economic, moral, and esthetic, were possible. Later I played the part of honest broker when Henry Luce lured Beard into doing a piece extolling the Constitution as a document in which moral factors were even more important in history than economic.

None of my praise for Brown should detract from Kirk's book. It is sound even though he gets some of his figures from a secondary source. My only consideration here is to see that pioneers get credit. I am sure Russell Kirk would agree with me. □

UNFINISHED BUSINESS:
A CIVIL RIGHTS STRATEGY
FOR AMERICA'S THIRD CENTURY
by Clint Bolick

Pacific Research Institute for Public Policy, 177 Post Street, San Francisco, CA 94108 • 1990 • 159 pages • $24.95 cloth, $12.95 paper

Reviewed by Steven Yates

One cannot close the cover of this new book by the author of *Changing Course: Civil Rights at the Crossroads* (Transaction, 1988) without a disquieting sense of how fragile a thing economic liberty really is: how it depends crucially on the recognition of certain principles and their embodiment in law, and how easily these principles can be compromised.

It is clear that the civil rights movement is in a deepening crisis. We once heard calls to create conditions for black empowerment by removing the legal obstacles restricting blacks' economic activities; now we see preferential treatment, set-asides, and group entitlement-claims. We have witnessed the empowerment of bureaucrats instead of blacks, the rise of victimology as a growth industry whose clients now outnumber non-victims, the smothering of institutions by all sorts in Federal regulations, and the gradual deterioration of race relations. Meanwhile, evidence is mounting that current civil rights policies leave average blacks no more well off than before and even discourage their economic advancement.

But these remarks only go so far. After all, the problems such strategies were intended to address were real. For years, Constitutional commitments to equality of all citizens under the law were marred by slavery and, later, by the legally sanctioned exclusion of members of nonwhite ethnic groups from significant economic influence. So once we note that "conventional" civil rights strategies fail to rectify things, the next question is, "Where do we go from here?"

Unfinished Business takes up where critics of affirmative action leave off, and offers a strategy very much committed to a free society and a market economy. Bolick's roots are in the 18th-century natural rights tradition, particularly Thomas Paine's version of it. This tradition emphasized individual natural rights and accompanying responsibilities in civil society, a limited government, and equality of all citizens under the rule of law. Civil rights, in this view, are individual rights embodied in and protected by civil law.

Thus the struggle for civil rights must not be merely a struggle *against* discrimination but also *for* individual rights, including the right to own property, to trade one's skills for money on an open market (the right of entrepreneurship), to assemble and bargain for wages, and so on. Excluded are all forms of coercion against other people, including entitlements that can be fulfilled only at the expense of others. Bolick follows F. A. Hayek in noting that liberty is a *negative* concept, the *absence* of coercion by others. This, Bolick argues persuasively, is the real heritage of the civil rights

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movement; what has happened in the past two decades is an aberration that shouldn't be seen as a real civil rights strategy at all (his term for it is "civil rights revisionism").

The original civil rights vision was an ideal that had to be implemented gradually over a long period of time. Its first phase began with the formulation of the concepts of natural rights and of political and economic liberty by John Locke, Thomas Paine, Adam Smith, and others, leading to the Declaration of Independence and culminating in the writing and signing of the U.S. Constitution and the Bill of Rights. The abolition of slavery and passage of the 13th and 14th Amendments, with the latter's equal protection clause, was its second phase. The third phase culminated in the Civil Rights Act of 1964 and the Voting Rights Act of 1965 which, in their original interpretations, did away with the last of the laws designed to keep blacks "in their place" and would have prepared the way for an increasingly color-blind society in which, to abbreviate Martin Luther King, individuals would be judged solely on the content of their character—and, of course, on their abilities. As a civil rights attorney with experience in the Justice Department and the Equal Employment Opportunity Commission, Bolick has some specific views on what led to the downfall of the original civil rights vision, and this brings us to specifics.

After the Civil War, the 14th Amendment applied equal protection to all citizens regardless of skin color, but new state laws soon restricted the activities of blacks, particularly in the South. The Civil Rights Act of 1866 was designed to protect blacks against such laws and reaffirm the role of the federal government in protecting individual liberties. But two Supreme Court rulings soon weakened its effects, leaving the door open for government to parcel out favors to some and erect barriers against others on the basis of race.

The first Supreme Court ruling was the *Slaughter-House* decision in 1873; the second was the better known *Plessy* v. *Ferguson* in 1896, which established "separate but equal" educational facilities. In the first, the Court upheld five-to-four a Louisiana state law that four years earlier had granted a monopoly to certain slaughterhouses in the New Orleans area and ordered others closed, in effect barring newcomers or "outsiders" from entry into a market. The Court's reasoning used a restricted interpretation of the equal protection clause, in effect dividing citizenship rights into two categories, those of the country as a whole and those of the individual states.

Slaughter-House set a dangerous precedent that was used to uphold similar laws in other states and led to a decline in the willingness of the Federal judiciary to defend economic liberty. In the arena of race relations, it permitted "separate but equal" facilities years before *Plessy*. In the professions, its eventual effect was to permit a legally protected formation of machinery that privileged some at the expense of others. "Establishments" developed in the professions that could protect themselves from competition with an arsenal of government regulations, contracts, and licenses aimed at discouraging or even blocking the advances of outsiders. Such laws did not discriminate against blacks, as such, but rather against outsiders who included nearly all blacks.

As for *Plessy*, the conventional wisdom has it that this decision was effectively overturned by *Brown* v. *Board of Education* after a long struggle by the NAACP. But to borrow an expression from affirmative action's backers, what was overturned was the letter but not the spirit of *Plessy*. While the "separate but equal" doctrine was repudiated, left intact was the view that government can rely on special "racial facts" as a basis for legislation, and therefore can classify people on the basis of race if such classifications are "reasonable." Thus was the door left open to civil rights revisionism, which has set the agenda for the last two decades.

The cornerstone of Bolick's strategy, then, is bold: to chip away at *Slaughter-House* type legislation until this crucial decision can be overturned, the culmination of an effort similar to the NAACP's campaign to defeat *Plessy*. The overturning of *Slaughter-House*, given its precedent-setting status, would clear the way for a return to judicial protection of fundamental economic liberties for individuals and for full Federal enforcement of the equal protection clause. Such a decision could then serve as the basis for eventually removing every law requiring group classification and every provision protecting some at the expense of others. Then the struggle for civil rights can be set back on course as a struggle for individual economic empowerment in a free market society—a struggle depending on equal protection,

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creating conditions for individual self-empowerment through individual action.

In other words, today's situation is the result of two mistakes: the abandonment of the doctrine of individual natural rights and the compromising of the equal protection clause. Both are necessary conditions for economic liberty, in its turn a condition for individual empowerment, black or white.

Unfinished Business is a powerfully argued work, with a wealth of legal citations and a number of case studies illustrating how civil rights revisionism has worked to the detriment of the people it originally set out to help. But Bolick doesn't answer all the questions. One potential problem is that Bolick, like many others, wishes to separate the concept of *affirmative action* from that of *quotas* in order to argue for affirmative action strategies that avoid quotas. This introduces confusion for, contrary to Bolick, when the former term was introduced it had no "original and highest meaning" or any clear meaning at all. This might seem a quibble; but it was partly the abuse of language by civil rights revisionists that created our present dilemmas. Rather than calling his strategy for black empowerment a kind of affirmative action, he should recognize that this term belongs in the vocabulary of the revisionists and accordingly drop it altogether.

As we conclude *Unfinished Business*, a far more troubling question arises, one that returns us to the reflection in my first paragraph. Bolick's premises are clearly stated throughout, and his emphasis on the need for litigation shows that the protection of individual economic liberties by government is no easy matter either to institute or to preserve. This is an issue which freedom philosophers are eventually going to have to address in more detail: individual liberty, the freedom from coercion by others, is neither self-establishing nor self-preserving, as history shows conclusively. Hence it is agreed to be a legitimate function of government to protect it. But how much governmental machinery are we looking at here? Could we find ourselves in the unenviable position of having derailed the drift toward social engineering only to replace it by an arsenal of new rules, this time in the name of economic liberty? Without careful development in the context of particular situations, calls for economic liberty and equal protection will degenerate into slogans. Bolick knows this; accordingly, he does not present them as universal panaceas. But the issue of how much governmental and legal machinery is required to safeguard individual economic liberty in an imperfect world bears pondering.

Unfinished Business has the merit of proposing a strategy based on principle instead of expedience—even if it doesn't answer every question, offering not a new direction so much as a proposal to get an old one back on course. Everyone involved in one way or another with the civil rights issue can benefit from reading this book. □

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THE GREATEST-EVER BANK ROBBERY: THE COLLAPSE OF THE SAVINGS AND LOAN INDUSTRY

by Martin Mayer

Charles Scribner's Sons, 866 Third Avenue, New York, NY 10022
1990 • 368 pages • $22.50 cloth

Reviewed by William H. Peterson

Martin Mayer, the wise and witty author of *The Bankers* and *The Money Bazaars*, here spins out a tale of wantonness, of banking naivete, dereliction, and culpability reaching into the highest levels of government and business. The culpability is not without irony—the culpable include high government officials such as "the Keating Five," then-Speaker of the House Jim Wright, and other assorted banking regulators elected or appointed to protect the public trust against, ironically, the very malefactors or bunglers they themselves became.

The irony brings to mind Juvenal's unanswerable enigma: *"Sed quis custodiet ipsos Custodes?"* (But who is to guard the guardians themselves?) It also brings to mind Acton's oft-demonstrated truth on the corruptibility of power as well as the regulatory implications of *McCulloch* v. *Maryland*, the landmark case of 1819 in which Chief Justice John Marshall forbade a state from taxing the Federally chartered Bank of the United States on the grounds that "the power to tax involves the power to destroy"—a line that could be rewritten to the effect that "the power to regulate involves the power to destroy."

In this closely detailed account of recent banking regulation and resulting repercussions, Mr. Mayer

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names names (including that of Neil Bush) and reveals the extraordinary ins, outs, and dimensions of the S&L scandal. He makes it clear that the scandal grew from regulatory roots reaching back more than a half-century to the New Deal, that thus was born today's "made-in-Washington" debacle. This debacle will end up costing American taxpayers upwards of $500 billion over the next 50 years, dwarfing the scandals of the Credit Mobilier in the Grant Administration or the Teapot Dome in the Harding Administration.

Here then is reference to the brazenly named bipartisan Competitive Equality Banking Act of 1987, passed by a Democratic Congress and signed by Republican President Reagan well after everyone inside the Beltway knew the S&L dam had broken, explicitly charging regulators to exercise "forbearance" so as to alleviate insolvent thrifts which should have been immediately shut down, stemming losses that were snowballing day after day—lost money to be made good by the nation's perennial forgotten man, the taxpayer.

Or here are background and details on the central role played by the PAC-financing U.S. League of Savings and Loan Associations, the octopus lobby with virtual veto power over S&L legislation, a situation reflecting one more example of Milton Friedman's brilliant perception of an "iron triangle" or cabal ever at work in Washington (apart from state capitals) of legislators, bureaucrats, and organized interests.

Or here is the bipartisan Democratic Congress-Bush Administration's Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). FIRREA's centerpiece was an initial injection of $50 billion into the Resolution Trust Corporation, a newly created government agency serving as the receiver for busted S&Ls and making certain that insured depositors got their money back.

But once again Congress and President Bush ducked the hard questions, especially of what to do about government deposit insurance, which continues serenely along at $100,000 per account (which originally topped out at $2,500 per account). Comments the author: "Deposit insurance has been an entering wedge for the socialization of losses, for establishing governmental safety nets not only under those who cannot take care of their own interests but also under active and consenting adults who demand to be rescued from the consequences of their own mistakes."

The looting of insured deposits is what this book is all about, validating the idea of Ludwig von Mises that intervention breeds intervention, that interventionism only makes bad situations get worse and worse. Martin Mayer may be a bit shy of putting forth the philosophy of limited government and free market economics (hardly *de rigueur* in a book of this type), but he performs an invaluable public service as he traces corruption between government and business, calls a spade a spade, an inveigler an inveigler. In this era of cover-ups of public venality, that's something. □

Dr. Peterson, an adjunct scholar at the Heritage Foundation, holds the Burrows T. and Mabel L. Lundy Chair of Business Philosophy at Campbell University, Buies Creek, North Carolina.

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